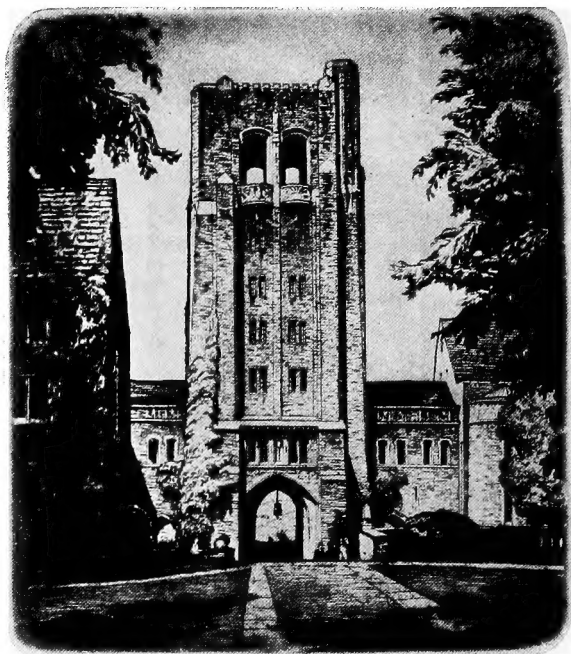


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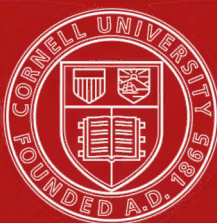
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BOSTWICK'S LAWYER'S MANUAL

A DESK BOOK

For Lawyers, Law Clerks and Law Students

Containing Handy Forms, Hints on Appeal Procedure, Suggestions, Letters,
Checks for Closings, Memoranda, Tables, Reminders, Etc., Etc.

A Mechanical Aid to the Busy Practitioner

by *RAUCIS*
CHARLES F. BOSTWICK
=
of the New York Bar

THE LAWYER'S CO-OPERATIVE PUBLISHING CO.,
NEW YORK, N. Y.

1907

A handwritten signature in black ink, appearing to read "L. A. H. 110". The signature is stylized with a large, sweeping initial "L" and "A", followed by "H." and "110".

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BY

CHARLES F. BOSTWICK

PREFACE.

I have been led to write this book by the knowledge, impressed upon me many, many times in my experience as a lawyer, that if such a book had been available to me I could have saved an immense amount of time and insured myself against many costly mistakes.

My book is not intended merely or mainly as a form-book, but as a mechanical aid in routine work, and only common forms, such as every lawyer's experience soon requires him to become very familiar with, are to be found here.

Forms are not infrequently as misleading as they are helpful, and the value of many of those that I have printed here lies in their approved accuracy, and their thorough detail; the value of others lies in their suggestiveness in regard to details intended to aid in the dictation of similar papers.

To the students of law, to clerks in a law office and especially to the busy practitioner, who does not want to spend any unnecessary time on matters relating to practice and who does want to feel that any suggestions he may accept out of the experience of another, have been thoroughly considered and are well advised, I submit these results of many years of practical work, and much careful study, believing that the book will be really and generally useful.

Acknowledgment is made for the aid given me by Richard K. McGonigal of the New York Bar.

CHARLES F. BOSTWICK.

OCTOBER 1, 1907.

Mutual Life Buildings.

NOTE.—G. P. R. indicates General Practice Rules or General Rules of Practice. Many of the "checks" may be typewritten and taken to closings with advantage. Late authorities should be posted in the book without delay and thus the Manual can be kept up to date. Reference to Special Term decisions, many of which are never reported specially should be so inserted. Interleaved copies of the book are best suited for this purpose. Suggestions from the users of this book, that will promote its usefulness along the lines indicated are especially requested.

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BOSTWICK'S LAWYERS' MANUAL.

PART I.

SUGGESTIONS AND REMINDERS.

I.

INFORMATION TO OBTAIN FROM CLIENTS ON FIRST INTERVIEW.

(Useful general questions.)

Full name of defendants; where do they reside? Business of defendant. Is defendant a domestic or foreign corporation?

Is this case affected by the Statute of Frauds?

Where was the contract made?

Is the Statute of Limitations involved?

Has the obligation been acknowledged or any payment been made, and when?

The residence of the plaintiff?

Is plaintiff a resident, or domestic corporation? If not, to whom can assignment be made? (if not assigned watch attorney's liability for costs).

If client or adversary a foreign corporation, has it obtained certificate to do business and paid license fee?

Inquire whether grounds of attachment exist.

Any infant plaintiffs? If so, get facts for appointment of guardian *ad litem*.

Any infant defendants; if so, get facts for service.

Nature of the action or obligation and when and where it arose?

Is it proposed to take action affecting title to real property; if so, obtain description for *lis pendens*, and note time in which complaint must be served.

Is defendant good for judgment and what business or property does he hold?

Names and addresses of any witnesses and whether they are favorably disposed to either party, and can affidavits be procured?

On First Interview.

- What papers, writings, or correspondence exist relating to the matter?
- Is plaintiff sole party interested; if not, who are (names and addresses)?
- Can defendants be served in this State?
- Is case one in which provisional remedy can be had?
- Has plaintiff given any receipt or had any correspondence?
- Does plaintiff require examination before trial?
- Is Section 829 of the Code involved?
- Are any depositions to be taken outside the State?
- Can defendant go into bankruptcy?
- Should summons be specially marked, as required by §§ 1774 and 1897 of the Code?
- Are answers to be served on co-defendants so as to enter judgment against them as well as plaintiff?
- If either party partnership is it limited or general, and full names of all partners and which are general and which are special, and addresses.
- If an account is involved, ask for itemized bill or invoice.
- Is there an account stated? If so get copy of statement of of account.
- Has adversary a right to do business under the name used?
- Any parties aliens or declared incompetents?
- Name and address of person giving information if not party, and his relation to the parties.
- Any facts aiding in determining the place to bring action — *e. g.*, in Federal Court or State Court, and is the law more favorable in one State than others?
- Can action be moved to Federal Court?
- Any counterclaim; if so, amount and nature.
- If acting for defendant, ascertain when served and endorse same on copies and other facts for diary and blotter entries.
- Must any steps be taken or notices served at once to preserve rights, *e. g.*, action against municipality?
- Get dates for diary entries for this purpose.

II.

INFORMATION TO OBTAIN FROM CLIENTS FOR THE PURPOSE OF AN ACTION FOR PERSONAL INJURIES.

(In addition to above.)

Full name and address of person injured.

Person in charge at time of accident.

Where accident occurred.

When accident occurred, giving day and time of day as nearly as possible.

Nature of accident. Circumstances surrounding happenings.

If vehicle, name of owner.

If vehicle, name of driver.

If vehicle, name of lessee, and name on vehicle.

If car, name and number of motorman.

If car, name and number of conductor.

If car, number of run.

If vehicle, *e. g.*, automobile, number and signs on same.

Nature and extent of injury.

Taken to hospital?

How long in hospital?

Name of doctors attending.

Address of doctors attending.

Copies of their bills.

How long away from business?

Amount expended for doctors.

Amount of earnings.

Witnesses and addresses.

Amount of other bills, special damages.

Any notice required to defendant prior to bringing action, *e. g.*, municipal corporation, employer (Employer's Liability Act).

Conversations with third parties concerning accident, their names and address.

Statements admissible under *res gestæ*.

Contributory negligence.

Fellow-servant rule.

Statutory violation, *e. g.*, Labor Law.

Name and address of attorney for adversary.

Correspondence.

Action For Personal Injuries.

- Is client or adversary domestic corporation?
- Is client or adversary foreign corporation?
- Is client or adversary partnership? if so, general or limited.
- Names of all partners.
- Photograph of place of incident.
- Models.
- Names and addresses of sub-contractors.
- If municipality is defendant, must notice be served prior to bringing action?
- If corporation counsel has examined, get copy of testimony (free).
- If policeman present, his number and precinct.
- Is negligence one of omission —
 - commission —
 - presumption?

III.

INFORMATION TO OBTAIN FROM CLIENTS FOR THE PURPOSE OF FILING A MECHANIC'S LIEN.

1. Claimant's full name and residence.
 - (a) If a partnership, full names and residences of all partners, and the firm's place of business.
 - (b) If a corporation, under the laws of what State it is incorporated, and if foreign, whether it has obtained a certificate of authority to do business in New York State and paid a license fee; and where its principal place of business is in this State.
2. Name of owner, lessee or party in possession of premises, and residence and his complete interest in the property.
3. Name of party for whom labor was performed or to whom materials were furnished, or, if lienor is contractor or subcontractor, with whom contract was made, and who employed claimant.
4. Is claimant contractor or subcontractor?
5. Copy or terms of contract under which services were rendered or materials furnished.
6. The nature of labor;
 agreed price of labor,
 or value of labor.
The nature of materials;
 agreed price of materials,
 or value of materials.
7. Date of commencement of work.
8. Is all of work completed; if not, how much?
9. Date of last item of work.
10. Date of commencement of furnishing materials.
11. Are all of the materials furnished; if not, how much?
12. Date of furnishing last materials.
13. Date of completion and acceptance of claimant's contract with contractor.
14. Were all the labor and materials actually used in the premises; if not, how much?
15. Amount claimed and interest.
16. Amount actually due claimant. Amount paid, credits and offsets.

To File Mechanic's Lien.

17. Amount to grow due claimant.
18. If a blanket lien, state, if possible, what amount went into each house.
19. Description of premises by street and number.
20. If a general assignment has been made by owner or party in interest, name and address of assignee.
21. Does claimant receive daily or weekly wages?
22. Architect's certificate.
23. Is lien one which can be affected by Bankruptcy? If so, consider how possible bankruptcy proceedings can be delayed for four months.

MUNICIPAL LIENS.

In addition to above.

24. Department or bureau having charge of the construction.
25. Are there any credits and offsets? If so, what, and how much?
26. A description of the public improvement.

IV.

INFORMATION TO OBTAIN FROM CLIENTS FOR THE PURPOSE OF DRAWING A DEED.

Information it may be wise or necessary to obtain for the purpose of drawing a deed of real estate:

Full name of grantor and his residence; if conveying in representative capacity, full description of his office and authority.

Is grantor a citizen of full age and competent?

If married, what is full name of wife, and is she of full age?

Is grantor to be described in deed as unmarried or widower?

Full name of grantee and residence.

If married, what is full name of wife of grantee?

Is grantee a citizen, of full age and competent?

Have any of the parties been divorced?

Date of Deed.

Description of property by metes and bounds; section and block number and street number, liber and page of last deed.

What consideration to be expressed?

Full consideration must be expressed in deed by person conveying in representative capacity.

The purchase price.

How much payable on delivery of deed?

Any purchase-money mortgage to be drawn; if so, see information to be obtained on drawing mortgages, p. 9.

Estate to be granted.

Is deed to be full covenant and warranty or bargain and sale or quitclaim?

When is the deed to be acknowledged and where?

Is deed to contain a clause taking subject to mortgages, party-wall agreements, leases or lettings, tenancies, covenants running with land or any restrictions, exceptions or reservations? What special clauses to be inserted?

Any provision as to beam rights or party-wall agreements, leases or tenancies, encroachments or easements to be inserted?

If mortgages are on the property, does grantee assume the payment thereof or take subject thereto?

For Drawing A Deed.

Extra personal property clause.

Amount, time of payment, and rate of interest on existing mortgages. Is interest paid to date?

First mortgage and details.

Second and subsequent mortgages and details.

Who in possession and nature and extent of his tenancy?

Are there any open and notorious easements? — eaves and shutters.

Are there any restrictive agreements or covenants affecting the property?

Has there been an award in condemnation proceedings?

Has vendor or vendee married since signing contract to sell?

Where are abstracts, searches, survey, and policy of title insurance, deed into grantor?

Is there any survey? If no survey, order one at once according to possession. Deed sometimes reads subject "to any state of facts which an accurate survey would show."

Look out for survey variations.

From whom was property acquired by seller, how, and when? If obtained under will, is there a posthumous child? If acquired within three years by will or intestacy, have all debts been paid? Have changes ever taken place in street lines or names?

Necessary details to have policy of fire, plate glass and indemnity insurance changed at once.

Recording fees.

See also Memorandum For Closing, Vendor and Vendee, p. 162 et seq.

V.

INFORMATION TO OBTAIN FROM CLIENTS FOR THE PURPOSE OF DRAWING A MORTGAGE.

Information it may be wise or necessary to obtain for the purpose of drawing a mortgage:

Full name of the mortgagor; his residence.

Is he citizen, full age and competent?

If married, full name of his wife, and is she of full age?

Is he to be described as unmarried or widower?

If purchase-money mortgage, will mortgagor's wife join if desired?

Does mortgagee desire it?

Full name of the mortgagee; his residence. Is he of full age and competent?

Who is to go on the bond?

If mortgage to be executed by attorney, who is to prepare power?

If mortgage to be executed by attorney, examine authority.

Date of bond and mortgage.

Amount of the mortgage.

For what period of time mortgage is to run.

The rate of interest.

Interest days and periods.

Description of property by metes and bounds, section, block number and street number, and page and liber of last conveyance.

How many days tax and assessment clause?

Is there to be:

Receiver clause?

Gold clause?

Violation clause?

Provision as to payment of any future tax that the law may impose, *e. g.*, income tax?

Provision as to privilege of mortgagor to make part payment on account before maturity?

Provision that mortgage shall become due on actual or threatened demolition of premises, at option of mortgagee?

Subordination clause?

For Drawing A Mortgage.

- If mortgagor desires to sell portions in small lots see that mortgage contains clause that mortgagee shall release from time to time by payment of proportionate part of lien of mortgage on each block, lot or parcel, generally one-third more than lien of mortgage, and provide who shall pay for release and amount thereof.
- If not a first mortgage, arrange for clause making subsequent mortgage due ten days after default in payment of interest on any prior mortgage.
- Is it to be a purchase-money mortgage? If so have bond and mortgage same date as deed and see that release clause is favorable to mortgagor, if so desired.
- When is the mortgage to be acknowledged and where?
- Who is to receive money, if some one other than mortgagor; who to have written authorization, and who to draw power?
- Who is to make affidavit of title?
- Is there to be brokerage; broker's address and who is to pay the brokerage and how much?
- If there is a survey, see if there are any variations.
- Where is abstract, last deed into mortgage, policy of title insurance, and survey?
- Mortgage recording tax and other recording fees.
- Necessary details to have policy of fire, plate glass and indemnity insurance changed at once.
- Will party have certified check at closing (to order of himself)?
- Amount of prior liens.
- Are there any prior mortgages; if so, names, dates, amounts, due dates, etc., when last interest was paid?
- Are any estoppel certificates to be obtained?
- Are there to be any satisfactions of mortgages or assignments of mortgages to be obtained before closing?
- Any *lis pendens*, mechanics or other liens to be cancelled before closing?
- Are there any unpaid taxes, assessments or water rates; if so, how much?
- Will client obtain tax bills?
- Any authorizations to pay taxes, assessments, water rates, mortgages, judgments or mechanics' liens to be drawn for closing?

For Drawing A Mortgage.

Are there any judgments against mortgagor; if so, are satisfactions of such judgments or assignments to be obtained before closing?

Are there any proposed widenings or other assessment proceedings?

Are condemnation proceedings contemplated or has an award been made?

Are there pending any actions against abutting railroads, elevated or otherwise?

Restrictions in title.

Party-wall agreements.

Leases or lettings; see that leases have clauses subordinating them to any future mortgages.

Tenement house, building department and other violations.

Inquire if any chattel mortgages on fixtures or material or any such purchased by conditional sale.

Who is in possession, and nature and extent of his tenancy?

Any open or notorious easements?

How long has mortgagor owned premises, and how did he acquire same. If acquired by will, is there posthumous child?

If acquired within three years by will or intestacy, have all debts been paid? See *Moser v. Cochrane*, 107 N. Y. 35.

Amount of equity.

Assessed value of property.

When and where is transaction to be closed? Customarily at office of attorney for mortgagee.

Amount of attorney's bill for services?

See Memorandum for Closing, Mortgagor and Mortgagee, p. 170 *et seq.*

VI.

FACTS TO ASCERTAIN BEFORE DRAWING CONTRACT TO SELL REAL PROPERTY.

(When acting for vendor.)

Before signing the contract to sell real estate, it may be wise to ascertain the following facts or some of them:

Date of contract.

Name of seller and address.

Is he a citizen, of full age and competent?

If agent is to sign contract for purchaser see to it that he is given full authority.

Will wife of grantor join in deed, her full name, and is she of full age?

Has grantor been divorced? If so, examine proceedings and judgment.

Any marriage settlements?

Will wife of grantee join in purchase-money mortgage and is it desired?

Name of buyer and address. Is he of full age and competent?

Is the purchaser a responsible person?

Description by metes and bounds, street number, section and block number, liber and page of last deed. Use description in last deed unless changes in street lines have taken place.

The purchase price.

How much to be paid on signing contract.

How much payable on delivery of deed.

(See that the earnest money is more than sufficient to cover brokerage. Earnest money should be at least two per cent. of the purchase price.)

Is deed to be a full covenant and warranty, quit claim or bargain and sale? When and where to be executed?

Avoid clause that title shall be satisfactory to third parties or company.

Is there to be an extra personal property clause?

What special clauses to be inserted?

Is deed to contain a clause taking subject to party-wall agreements, leases or lettings, tenancies, covenants running with land?

Contract To Sell Real Property — Vendor.

Is conveyance to be "subject to" the mortgages or are they to be "assumed" by the purchaser?

Any exceptions or reservations to be inserted?

Where are policies of fire, indemnity and plate glass insurance and for what amount?

Any provision to be inserted as to on whom loss falls in case of fire before closing?

Where is abstract of title, policy of title insurance and last deed into grantor?

Whether there is any variation in survey. (If no survey exists, have one made before signing contract, so that description in deed will cover no more than survey in possession and deed to seller.)

What broker brought about sale, his address, and who is to pay him and how much; and is any clause to be put in contract covering same?

Have water meter read.

Who is in possession? Nature and extent of his tenancy.

Any open and notorious easements?

Has any change ever taken place in street lines or name?

How long has the intended grantor owned the premises?

How did he acquire the same? If obtained under will, is there a posthumous child? If acquired within three years by will or intestacy, have all debts been paid? See *Moser v. Cochrane*, 107 N. Y. 35.

Are condemnation or assessment proceedings contemplated or pending, or has award been made?

Amount and details of first mortgage, and when last interest paid, and if past due whether called or not.

Amount and details of second and subsequent mortgages and when last interest paid, and if past due whether called or not.

Has any of the principal been reduced by payments on account?

If payments on mortgages have been made will purchaser require an estoppel certificate?

Is there to be a purchase-money mortgage? If so, obtain full particulars and who is to go on bond. (See p. 9.)

And provide for payment for drawing and recording deeds and mortgages and payment of recording tax.

Contract To Sell Real Property — Vendor.

If special clauses in purchase-money mortgage are essential, provision for the form of the mortgage to be given should be made in the contract.

What liens other than mortgage on the premises?

Have all taxes, assessments, and water rates been paid? If not, amounts due.

Will client obtain tax and other bills, with interest computed?

Leases or lettings.

Are there any covenants or restrictions on title which would justify rejection thereof?

Any mechanics' liens?

Are there any party-wall agreements?

Encroachments, beam rights, foundation extensions, eaves and shutters, sewer and drain rights.

Tenement House, Health, Fire and Building Department and other violations.

Are there any agreements with telephone and telegraph companies or leases for signboards?

Rights against abutting railroads, elevated or otherwise.

If vault exists have fees been paid city?

Memorandum of rents paid and unpaid and are rents to be apportioned?

Is there to be apportionment of insurance?

Electric, steam, elevator, janitor and minor service.

Mortgage recording tax and other recording fees.

Inquire if any chattel mortgages on fixtures or material or any such purchased by conditional sale.

For what purpose the property has been used (Civil Damage Act; Distilling Laws, U. S.).

Contemplated improvements in vicinity.

Amount of income property yields.

Average cost of annual repairs.

What is assessed value of property?

What mortgages were formerly on the premises?

If either party a corporation, have certified copy of resolution and certificate of officers.

Closing of title, date and place, customarily at office of attorney for seller.

(Taxes in New York City become a lien on the first Monday in October, § 914, Greater New York Charter.)

VII.

FACTS TO ASCERTAIN BEFORE DRAWING CONTRACT TO BUY REAL PROPERTY.

(When acting for vendee.)

Date of contract.

Name of seller and address.

Is he a citizen of full age and competent?

If agent is to sign contract for owner, his name and investigate his authority.

Will wife of grantor join in deed, her full name and is she of full age?

Will wife of grantee join in purchase-money mortgage and is it desired?

Name of buyer and address. Is he of full age and competent?

Description by metes and bounds, street number, section and block number, liber and page of last deed. Use description in last deed unless changes in street lines have taken place.

The purchase price.

How much to be paid on signing contract?

How much payable on delivery of deed?

See that there is sufficient equity after payment upon signing of contract. Provide that earnest money and expense of examination shall be a lien.

Is deed to be a full covenant and warranty, bargain and sale or quit claim? When and where to be executed?

Is there to be an extra personal property clause?

What special clauses to be inserted?

If title is to be satisfactory to third party, provision should be made in contract.

Is deed to contain a clause taking subject to mortgages, party-wall agreements, leases or lettings, tenancies, covenants running with land?

Any exceptions or reservations to be inserted?

Where are policies of fire, indemnity and plate glass insurance and for what amount?

Where is abstract of title, policy of title insurance and last deed into grantor?

 Contract To Buy Real Property — Vendee.

If no survey exists, have one made before signing contract so that description in deed will cover all the property in possession.

What broker brought about sale, his address, and who is to pay him and how much, and any clause to be put in contract covering same?

Have water meter read.

Inquire from vendor who is in possession; nature and extent of his tenancy. Any open and notorious easements?

Has any change ever taken place in street lines or name?

How long has the intended grantor owned the premises?

How did he acquire the same? If obtained under will, is there a posthumous child? If acquired within three years by will or intestacy have all debts been paid? See *Moser v. Cochrane*, 107 N. Y. 35.

Are condemnation or assessment proceedings contemplated or pending, or has award been made?

Amount and details of first mortgage, and when last interest paid and if past due whether called.

Amount and details of second and subsequent mortgages, and when last interest paid and if past due whether called.

Has any of the principal been reduced by payments on account; if so, require estoppel certificate.

Is conveyance to be subject to the mortgages, or are they to be assumed by the purchaser?

If prior mortgages require vendor to provide subordination agreement?

Is there to be a purchase-money mortgage? If so, provide full particulars and who is to go on bond. (See p. 9.)

If special clauses in purchase money mortgage are essential provision for the form of the mortgage to be given should be made in the contract.

If purchase-money mortgage to be given, see that release clause is favorable to mortgagor, *e. g.*, if purchaser desires to sell portions in small lots, see that contract provides that the mortgage shall contain release clause favorable to purchaser enabling purchaser to sell lots from time to time, by payment of proportionate part of lien of mortgage on each block, lot or parcel, generally one-third more than lien of mortgage, and who shall pay for drawing of release and amount thereof.

What liens other than mortgage on the premises.

Contract To Buy Real Property — Vendee.

Have all taxes, assessments, and water rates been paid? If not, amounts due.

Leases and lettings.

Are there any covenants or restrictions on title which would justify rejection thereof?

Any mechanics' liens?

If any partially constructed building on premises provide that vendor will produce proof of payment of union workmen or Allied Building Trades Association, otherwise payment may have to be made by vendee before he can secure workmen.

Are there any party-wall agreements?

Encroachments, beam rights, foundation extension, eaves and shutters, sewer and drain rights.

Tenement House, Health, Fire and Building Department and other violations.

Are there any agreements with telephone and telegraph companies or leases for sign boards?

Rights against abutting railroads, elevated or otherwise.

Vault space permits.

Memorandum of rents paid and unpaid, and are rents to be apportioned?

Is there to be apportionment of insurance?

Electric, steam, elevator, janitor and other minor service.

Mortgage recording tax and other recording fees.

How old is building?

Inquire if any chattel mortgages on fixtures or materials or any such purchased by conditional sale and require title free from same.

For what purpose the property has been used (Civil Damage Acts, U. S. Distillery Laws).

Contemplated improvements in vicinity.

Amount of income property yields. Average cost of annual repairs.

What is assessed value of property?

What mortgages were formerly on the premises?

If either party a corporation have certified copy of resolutions and certificate of officers.

Closing of title, date and place, customarily at office of attorney for seller.

(Taxes in New York City become a lien on the first Monday in October section 914 Greater New York Charter.)

VIII.

MEMORANDUM FOR DRAWING CERTIFICATE OF INCORPORATION AND BY-LAWS.

- Under the laws of what State is company to be organized?
Name of proposed company, and is any portion prohibited by statute?
Objects or purposes, *i. e.*, nature of business to be carried on.
Name of incorporators, residence, post-office address of each, number of shares each is to take and citizenship of incorporators.
Number of directors, names and residences of first directors and their post-office addresses.
Location of principal office.
Place or places where business is to be carried on.
Duration of company's existence.
Amount of authorized capital stock.
Number of shares and par value of each.
Amount of preferred stock and par value of each.
Preferred stock entitled to cumulative or non-cumulative preferred dividend at the rate of what per cent. per annum, whether payable yearly, half-yearly or quarterly, and on what days.
Are preferred stockholders entitled to any further share of profits?
In what manner is preferred stock preferred in case of winding up?
Is preferred stock to be subject to redemption by the company; if so, at what price (not less than par), when and how?
Are stockholders, common or preferred, to have any special rights, or to be restricted as to voting? Is provision to be made for cumulative voting?
Amount of debentures or bonds and terms of same.
Is stock to be issued for cash or property?
Number of shares to be issued for cash and number to be issued for property. If any to be issued for property state amount, value of property and give detailed description of same.
To whom and in what amounts is stock to be issued?

Certificate Of Incorporation — By-Laws.

Amount of capital with which company is to commence business.

Any special limitations as to the business, powers or obligations of the officers of the company.

Is it proposed to hold stock of other companies?

By whom will property be conveyed or transferred to the company?

If corporation is to take over existing business, on what day shall it take possession and commence business?

Is lease of premises to be assigned to the company?

Are any special contracts to be drawn; if so, state details?

Names of president, vice-president, secretary and treasurer.

Salaries to be paid officers.

Is executive committee of directors to be provided for; if so, how many; powers and duties; how elected, by directors or stockholders; if appointed is president to be *ex officio* member?

Does company want clause giving power to take and hold real estate in and out of the State of organization?

Is power to be generally in the stockholders or in the directors?

What shall constitute a quorum of stockholders?

Are there to be any restrictions as to the residence of the parties?

Inspectors of election to be appointed or elected and their names.

Are any two offices to be held by the same person?

Is treasurer to act without a bond?

Is provision to be made that less than a quorum of stockholders may adjourn?

Are directors to be stockholders?

Any restrictions upon sale of stock.

Fiscal year of the company, day and hour of annual meeting of stockholders, and where to be held.

What notice to be given of annual meeting?

By whom may special meetings of stockholders be called?

Notice required to be given of special meeting of stockholders.

When are regular directors' meetings to be held?

By whom are special meetings of directors to be called?

Certificate Of Incorporation — By-Laws.

Notice required to be given of special meetings of directors.

Where are directors' meetings to be held?

Is provision to be made for holding directors' meetings outside of State?

Number of directors to constitute a quorum.

Are directors to have power to amend the by-laws, or stockholders only?

Name of bank where account is to be kept.

Who is to sign and countersign notes and checks, make purchases, contracts, etc., and what limitations, if any, are to be placed thereon?

Stock certificates to be signed by president, and what other officer?

Are directors to be paid for attending meetings?

When is dividend to be declared?

Description of seal, when books closed, what books to be ordered.

When and where do incorporators intend to execute and acknowledge certificate of incorporation?

IX.

TICKLER FOR COMPLETING ORGANIZATION OF A CORPORATION.

1. Certified copy of certificate of organization.
2. Copy of organization tax receipt.
3. Waiver of notice and call of meeting.
4. Proxies.
5. Minutes, meeting of subscribers.
6. Subscription list of stock.
7. By-laws and copy.
8. Ballots for directors and officers and inspectors of election.
9. Proposition from promoters.
10. Minutes, meeting of board of directors, first and second meetings.
11. Secretary's oath (if required).
12. Treasurer's bond (if any).
13. Report of treasurer.
14. Acceptance of the proposition of promoters.
15. Book of stock certificates, common and preferred.
16. Seal press and seal.
17. Seal wafers.
18. Stock ledger.
19. Stockholders' record and transfer book.
20. Minute book for stockholders.
21. Minute book for directors.
22. Bill of sale.
23. Deed.
24. Assignment of outstanding accounts and contracts.
25. Assignments or licenses of patents and assignments of copy-rights.
26. Any powers of attorney of absentees.
27. Certificate of payment of one-half capital stock.
28. List of directors and officers for filing in other States.
29. Statement and designation of person on whom process can be served for filing in other States.
30. Papers to obtain certificate to do business in other States.
31. Cash, or certified check to be turned over to new corporation.
32. If foreign corporation, certificate, etc. for New York license fee and certificate of authority.

Completing Organization, Corporation.

33. Fees.
34. Voting trust deed.
35. Trust certificates.
36. Corporate calendar.
37. Letter to new corporation. (See p. 120.)
38. Transfer of good will.
39. Receipts for property and cash conveyed to corporation.
40. Notices of meeting.
41. Waiver of notice of assessment.
42. Resolution to trust company.
43. Resolution to bank.
44. Names of inspectors, and have they been notified?
45. Oath and report of inspectors.
46. Contracts of former owners not to engage in business.
47. Certificate upon payment of installment.
48. Notification of persons absent at election.
49. Answer of such person.
50. Appraisement certificate and report.
51. Resolution for trust company authorizing mortgage, or deed
of trust, bonds.
52. Accountant's certificate.
53. Affidavits of service.
54. Admission and waiver.
55. Lease.
56. Statement and list of officers.
57. Transfer insurance policies.
58. Papers for Custom House.
59. Paper for warrants on Sub Treasury.
60. Consent of the contracting parties to change of obligor on
important contracts.
61. Stock transfer stamps.

X.

HINTS FOR DRAWING A PARTNERSHIP AGREEMENT.

Agree to become and do become partners.
Share in profits and losses.
Duration, time, notice of continuance or dissolution.
Name, place, and survivors.
Does either partner own the real estate?
Capital.
Additional capital.
Interest on capital.
Profits, how to be disposed of.
Losses, how apportioned.
Capital, how distributed if intact.
Capital, how distributed if not intact.
Guaranty of profits to one partner.
How profits to be drawn.
Profits of one year not to be taken into account as to losses.
 in following years.
Attention to business.
Salary to one partner before profits.
Not to engage in any other business.
How checks signed.
No firm paper to be made.
Not to go on bonds or undertaking.
Limits of power of partners as to purchases, etc.
Hiring of clerks.
To give information.
Trade secrets.
To pay promptly private debts, effect of failure.
Advances to firm when to be made and to draw interest.
Books of accounts.
Annual accounts.
Provisions for admission of successors.
Decision of majority binding.
Death not to dissolve.
Retirement.
Allowance for good will upon death.
Retiring partner not to carry on business.
No survivorship.

Partnership Agreement.

Dissolution if losses amount to given proportion of capital.

Provision in case of death } Share of deceased

Outstanding contracts } purchased by

Compensation of survivors. } survivors.

Power of expulsion.

Arbitration clause.

Any certificates to be filed in County Clerk's office as to
names.

See Letter to Surviving Partner, page 156.

XI.

SUGGESTIONS FOR PREPARATION FOR TRIAL.

NOTE.

Many trial lawyers have found it a mechanical aid to obtain a 30-page folder or jacket with indented finger index, each page being numbered from 1 to 30, and placing under the proper number the papers to be used at the trial. Thus any paper may be easily found at the trial without searching through a mass of confused documents, and when not in use replaced in its proper place for future use.

In connection with such a folder or jacket the following, used as an index of contents, has been found useful.

1. Arrangement of dates.
2. Conference with witnesses.
3. Correspondence, chronologically arranged and copies thereof.
4. Defense's case, witnesses, all things relative to opponent's case and memo. of defendant's cases.
5. Examination before trial.
6. Interest. (173 N. Y. 417.)
7. Jury list and jury fee.
8. List of exhibits, books, papers, etc., needed at trial.
9. List of papers on file in public offices to be produced at trial.
10. List of law books needed at trial.
11. Memorandum for opening.
12. Notice to produce and affidavit of service or admission.
Order under §§ 866, 867 of Code. See Form No. 229, p. 483.
13. Notice of trial and affidavit of service.
14. Orders and motion papers.
15. Original pleadings and bill of particulars, order affecting.
16. Pleadings marked for the court.
17. Questions for jury.
18. Requests to charge.
19. Trial brief of law.
20. Trial brief of fact.
21. Things to be attended to.
22. Witnesses, addresses and subpoenas and subpoenas *duces tecum*.
23. Books of accounts produced by subpoena *duces tecum* or order
timely notice — § 866, Code.
24. Hypothetical questions.
25. Surveys, models, photographs and other exhibits.
26. Get necessary certified copies of documents.

XII.

SUGGESTIONS FOR CONDUCTING AN EXAMINATION IN SUPPLEMENTARY PROCEEDINGS.

First. When the examination is before a referee, before proceeding to take any evidence, he should subscribe to the following oath:

SUPREME COURT,
(*New York*) County.

IN THE MATTER OF SUPPLEMENTARY
PROCEEDINGS.

(*JOHN FRENZEL,*)
Judgment Creditor,

against

(*WILLIAM HOLMES,*)
Judgment Debtor.

I, (*Henry Patterson,*) the referee appointed herein, do solemnly swear and declare that I will faithfully and fairly discharge my duty upon this reference, and will make a just and true report according to the best of my understanding.

(*HENRY PATTERSON.*)

Subscribed and sworn to before me }
this 6th day of (*September, 1906.*) }

(*OLIVER HAY,*)

Notary Public, (*N. Y.*) Co.

Second. The referee should keep a record of the proceedings taking down the testimony in narrative form, if no stenographer is available, except where objection is made to a question or where the witness persists in making evasive replies, when the question and the objection, with the ruling thereon, or the unsatisfactory answer of the witness should be set forth at length, so that a motion to compel a direct answer may be made.

When the examination is not before a referee, a record of the

Record Of Examination.

examination is taken down by the attorney for the judgment creditor.

Following is a convenient form for the record of the proceedings before a referee:

Examination of (*William Holmes*,) the judgment debtor herein, in supplementary proceedings, pursuant to an order annexed hereto, dated (*March 10, 1905*,) signed by Honorable (*Charles H. Truax*,) a Justice of this Court, requiring said debtor to appear before (*Henry Patterson*,) Esq., the referee therein appointed.

Present: The Referee.

The Judgment Debtor.

(*RALPH HAYNES*,) ESQ.,

For the Judgment Creditor.

(*DODSON & JAMES*,) (Mr. James),

For the Judgment Debtor.

The following oath was subscribed by the referee:

(Set forth oath as above.)

Third. The judgment debtor is sworn either by the judge or the referee, upon the Bible or by raising his right hand.

"You do solemnly swear that you will true answers make to such questions as may be put to you concerning your property, so help you God."

(*William Holmes*,) the judgment debtor, being first duly sworn, true answers to make to such questions as might be put to him concerning his property, testified as follows: * * *

Fourth. A wide scope is allowed in the examinations, and all questions, except such as are grossly irrelevant to the inquiry, are allowed.

The judgment debtor should be examined along the lines suggested in the next paragraph and inquiry concerning each special kind of property should be completed before proceeding to the next, unless it becomes advisable to have a receiver appointed in haste. In that case, it may be well to confine the examination to the property disclosed, secure the appointment of the receiver and complete the examination at subsequent hearings, if need be.

Fifth. The judgment debtor should be examined on the following points:

1. If there are any suits, actions, or legal proceedings of any kind against you pending and undetermined, state the full particulars as to each.

Questions To Ask.

2. Are there any judgments on record against you? What amount and where? Have payments been made on account thereof by you or by any third party for you? By what person? Was satisfaction recorded? Why not?
3. Are supplementary proceedings on any of these judgments pending against you?
4. Has any judgment creditor's action been commenced against you?
Note. — These last two inquiries are necessary to sustain an application for a receiver.
5. Have you any interest in real estate in this state or elsewhere? Are you entitled to any reversion, remainder, or contingent interest in real estate; or is any real property held in trust for you? Do you own any leasehold or have you any interest in any lease of real property? Do you lease any real property? Have you a lien or any interest in or under a lien on real property?
6. Have you any interest under any will or deed of trust? Have you recently received any money or property under any will by inheritance? How was same disposed of?
7. What property have you in this State, real or personal? Have you made any transfers of same and to whom? State circumstances.
8. What property, real or personal, have you outside the State? Give description and location.
9. Have you any mortgages on real or personal property or other investments? Any stock, bonds, scrip, dividend certificates, interest coupons, certificates of deposit, promissory notes, drafts, checks?
10. Have you any interest in any pension, patent, copyright, or invention, or in any royalties?
11. Do you own a seat in any stock, produce, cotton, or other commercial exchange?
12. Have you any right or interest or any prospect of pecuniary advantage under any contract or any interest in any suit in the courts of this or any other State, or in the federal courts?
13. Are there any judgments in your favor in any action by or against you? Have any judgments been assigned to you?
14. Are you a plaintiff in any action now pending in any court?

Questions To Ask.

15. Have you any insurance on your life? To whom was same made payable? When were the beneficiaries changed?

Note. — A policy payable to debtor's heirs, administrators, or assigns, may be applied to the payment of the judgment.

16. Are you the beneficiary under a policy upon the life of any other person?

17. What property did you have at the time (mentioning date) when the debt for which this judgment was secured was contracted? Trace the disposition of this property.

18. Endeavor to disclose what amounts the debtor has received during the past sixty days.

Note. — Unless he shows that he is a householder, and that his earnings for sixty days previous to the service of the order are necessary for the support of his family, they may be reached.

Try to make the witness talk of himself, his family, his business, how he lives, what he lives on and what his prospects are? Follow him closely in all his statements, and trace any disposition of his property he has made.

If he is endeavoring to conceal property it will be difficult for him to avoid inconsistencies and contradictions in a falsehood covering any protected period of his life.

The following questions are suggested for this purpose:

Where do you live? How long have you lived there?

How much do you pay for rent, board, service, etc.?

Are you a member of any club? Dues paid?

What salary or income have you?

When did you last receive your salary?

Have you any uncollected debts or other money coming to you?

What is your occupation? Nature of employment?

Are you a member of a firm? What is its business and what are its debts?

Are you married? Have you a family? How large?

How many are dependent on you?

With whom do you live?

What money have you received within the last sixty days from any source?

What have you done with it?

Have you a bank account?

Questions To Ask.

When did you make your last deposit?

When did you draw your last check?

When did you have your bank book balanced?

Have you anything in pawn?

Do you own or rent the place where you live?

Who owns the furniture in it? What does it consist of?

Have you a watch, jewelry, piano, horses, carriages, motor vehicles, paintings; any silverware, or curios?

Have you a library?

Have you a collection of coins or antiques?

Have you made a will?

Have you paid any taxes or assessments? To what amount?

Have you received any checks? How did you get them cashed?

What money have you spent since the service of this order?

Had you at the time of the service of this order any rights, real, or personal property, money, debts, claims, mortgages, leases, choses in action, judgments, insurance, watches, jewelry, checks, notes, bills of exchange, bonds, stocks, or certificates; any interest in a contract, patent, copyright, invention or royalties, which you are not now possessed of, or in which you now have no interest, or a lesser interest?

Sixth. If the judgment debtor is not endeavoring to conceal assets, the foregoing examination should be completed in two hours, or less, and should disclose any property the debtor may have, or compel him to perjure himself in order to conceal it. Whenever property is disclosed or hinted at, more particular examination should be gone into to ascertain its amount and location.

Seventh. If adjournments are necessary, have them noted on a separate sheet of paper, in consecutive order, and dated as of the adjourned day, each adjournment signed by the judgment debtor, and initialed by the judge or referee, and attach same to the original order, so that the record may at all times be complete and ready to file. You are thus prepared to ask for the appointment of a receiver at any time or to make a motion to punish for contempt.

Eighth. Have the testimony taken at each examination signed by the judgment debtor, or witness, and sworn to be-

Report Of Referee.

fore the referee or judge before proceeding to the next examination. In this way the witness may be prevented from changing his testimony when his subsequent examination shows the materiality of what he has already testified to.

Ninth. When the examination is taken before a referee, upon its completion, his report is made up. This consists of the narrative record of the testimony, subscribed and sworn to by the judgment debtor, and any other witness, set forth according to the form given above, and the original order with adjournments noted thereon. No findings or recommendations are included, but the following should be indorsed upon the report.

SUPREME COURT,
(*New York*) County.

IN THE MATTER OF SUPPLEMENTARY
PROCEEDINGS.

(*JOHN FRENZEL*),

Judgment-Creditor,

vs.

(*WILLIAM HOLMES*),

Judgment-Debtor.

To the (*Supreme*) Court (*of the State of New York*):

I, (*Henry Patterson*), the referee duly appointed by the annexed order in supplementary proceedings to take and certify the examination of (*William Holmes*), the judgment debtor, do hereby certify that the annexed pages contained a full, true, and accurate report of said examination, and the whole of it.

Dated (*New York, April 15, 1905.*)

Respectfully submitted,
(*HENRY PATTERSON.*)

See Forms, p. 544 *et seq.*

XIII.

SUGGESTED LINES OF INQUIRY WHERE QUESTION OF PERSON'S RESIDENCE IS INVOLVED.

As party to legal documents, how described, *e. g.*:

Complaints.

Affidavits.

Petitions.

Mail addressed.

Clubs and club directory.

Relatives and family tree.

Positions, political or otherwise, held by. Requiring residence.

Burial grounds.

Family bible, where kept.

Which home kept open all year.

Where did father live?

Does he import, custom house documents?

Has he given power of attorney?

Has he registered bonds?

Marriage certificate.

Birth certificate of children.

Other certificates in bureau of vital statistics.

Papers in office of cemetery company.

School and college records of children.

Regimental records.

Subscription to certificate of incorporation.

Did you ever serve summons?

Sheriff's jury.

Application for admission to bar.

Masonic order or fraternity.

License to do business, trade or profession.

Lives, actually.

Owens house.

How recited in deeds.

How recited in mortgages.

Passports.

Bank account, where.

Bank account, opening.

Stock books of corporations.

Residence.

Safe deposit vaults.
Application for insurance.
Where he does business.
Length of time in places.
Entries on hotel registers.
Where he votes.
Where he pays taxes, personal.
Directory.
Jury duty.
Law suits as plaintiff and defendant.
Statements to third persons.
Statements in will.
Accident insurance.
Pension.
Patents, copyrights.
Address on personal effects.
Visiting cards.
Where are dividends directed to be sent.
Cable address,
Directory.
Ever in hospital.
Ever arrested.
Pew in church.
Church records as member.
Member of any exchange.

XIV.

SUGGESTED LINES OF INQUIRY UPON EXAMINATION OF NON-EXPERT, NON-SUBSCRIBING WITNESSES TO WILL AS TO TESTATOR'S MENTAL CAPACITY.

I.

Show by question and answer:

1. Identification of witness; name, address, age, etc.
2. That witness was acquainted with testator, specifying times.
3. Had an opportunity to observe him during such times; bring this out fully, showing extent of opportunity.
4. Did observe him during such times.
5. Bring out facts showing acts, doings, statements and declarations and manner of testator which tend to show soundness or unsoundness of testator's mind and, when this foundation has been laid, then the following is the form of questions to be put to such witnesses:

II.

"From the conversations you had with him and from his actions, his acts in your presence and as to which you have testified, were they the acts and conversations of a rational or irrational man?"

III.

"Were all such acts and conversations the acts of a rational man; are your conclusions drawn from the specific facts which you have testified to?"

SUGGESTED LINES OF INQUIRY UPON EXAMINATION OF NON-EXPERT BUT SUBSCRIBING WITNESS TO WILL AS TO TESTATOR'S MENTAL CAPACITY.

Show by question and answer:

1. Identification of witness, name, address, age, etc.
2. That witness was acquainted with the testator, specifying times.
3. That witness had an opportunity to observe him during such times (Bring this out fully, showing extent of opportunity).

As To Testator's Mental Capacity.

4. Did observe him during such times.
5. Bring out facts showing acts, doings, statements, and declarations, and conversations and manner of testator, which tend to show soundness or unsoundness of testator's mind.
6. From the conversations had with the testator, and from his actions in witness's presence, and which he has testified to, ask witness whether the same were the acts and conversations of a rational or irrational man.
7. Whether all such acts and conversations were the acts of a rational man.
8. Whether witness's conclusions are drawn from the specific facts to which he has testified.
9. That witness was subscribing witness to will of testator, and when this foundation has been laid (and as matter of fact only the fact that he was subscribing witness to the will is necessary, although the other matters are desirable) then the following is the proper form of question that may be put to such witness:

“In your opinion what was testator's mental condition on the date on which he executed the alleged will?”

XV.

STEPS TO TAKE IN AN ACTION TO FORECLOSE A MORTGAGE.

(No infants or absentees.)

1. Are there any outstanding dower rights against the property?
2. Search against property for conveyances and liens subsequent to the mortgage.
3. Draw summons and complaint, notice of object of action and *lis pendens* (Forms Nos. 21, 22, 23, 44 and 45.)
4. File complaint and *lis pendens*; *lis pendens* must be filed with complaint or after (but not before), and at least twenty days before final judgment. §§ 1631-1670 C. C. P.
5. Serve all defendants with summons and complaint. Service must be made within 60 days after filing *lis pendens*. § 1670 C. C. P.
6. When all defendants have failed to answer within time allowed, apply for judgment and order of reference to compute amount due, giving due notice to those who have appeared. (See note, page 575, and Forms Nos. 296, 297, and 298.)
7. Obtain and serve certified copy of order of reference to compute upon referee, and arrange for hearing.
8. Give notice of hearing to those who have appeared; time required five days where attorneys reside, or have their offices in same city or village, otherwise eight days. Prepare referee's summons for witness if needed. (Form No. 480, page 226.)
9. Attend hearing, produce bond, mortgage, and evidences of payment of taxes, water rates, and insurance, if these have been paid by mortgagee; have testimony prepared, also report. (Form No. 300, p. 581.)
10. Obtain report and pay referee.
11. File report, serve notice of filing and of application for judgment of foreclosure and sale. (See note, p. 582, and Forms Nos. 301, 302 and 303.)
12. Submit referee's report and proposed judgment of foreclosure and sale.
13. Prepare and file judgment roll.
14. Serve certified copy of judgment upon referee to sell, or upon sheriff if designated, arrange for date of sale, auctioneer

Outline Of Procedure.

and publication of notice, including prior liens, amount due and also restrictions.

15. Serve notice of sale on all parties entitled and send notice to designated papers with direction to publish twice a week for three successive weeks preceding sale, and on day preceding sale. Those interposing common form of appearance require notice of sale. (See note, p. 590, and Form No. 304, p. 591.)
16. Arrange for additional advertisement of sale if desired, also for protection of property.
17. Attend sale, obtain memorandum of purchase, signed by purchaser and ten per cent. in cash or certified check of purchase price, auctioneer's receipt—\$17.50 from purchaser for each parcel sold.
18. Attend closing; obtain certified checks for proceeds of sale and expenses, and pay referee.
19. File report of sale and enter judgment for deficiency; if any surplus, pay to city chamberlain, or county treasurer, giving notice of filing to those who have appeared. (See Form No. 305, p. 593.)
20. When eight days after service of notice of filing have elapsed, apply for order confirming sale giving notice to those who have appeared; produce upon application certificate of county clerk, showing that no objections have been filed.

PART II.

HINTS ON APPEAL PROCEDURE.

I.

From Judgments.

Supreme Court, Trial Term, to Appellate Division.

Entered on verdict and order denying motion for new trial.

1. As soon as the verdict has been rendered and carefully scrutinized, the next duty of the defeated counsel is to move to set aside the verdict and for a new trial, and he must make up his mind whether he will make the motion then and there, or wait until some future time to make it. He has under § 999 of the Code the rest of the term in which to move. If it is merely made as a formal motion for securing the right to have facts reviewed at the Appellate Division, it is best to make it then and there, but if the attorney feels that there is any hope of having a new trial on the ground that the verdict is excessive or insufficient in damages or otherwise contrary to the evidence, it is better to obtain leave to submit briefs, or make motion at a later day in the same term.
2. When verdict rendered, move to set aside verdict and for new trial upon all the grounds in § 999 of the Code, and upon any special grounds that exist. Motion to set aside verdict and for new trial must be made at same term.

And before same judge. § 999, Code; but see § 1002, Code. See Rule 21, G. P. R.

If made at close of case and judge reserves decision, or if it is to be made later, obtain and serve with notice of entry order staying entry of final judgment until decision of motion and entry of order thereon. § 1005, Code.

The court usually denies this motion, in which event —

3. Move for stay of execution and additional time to make a case.

The court usually grants this motion and gives 20 to 30 days stay of execution, and from 30 to 60 days in which to make a case. See § 1351, Code.

Taking Appeal.

4. Get exhibits.
5. Get extracts from clerk's minutes. § 1237, Code. If decision is reserved on motion for new trial the exhibits and extracts from minutes cannot be obtained until the trial judge decides the motion.
6. Order copy of stenographer's minutes of trial.
7. Enter in diary when stay expires.
The stay begins to run from date of entry of judgment.
8. Receive copy of judgment with notice of entry.
9. Enter in diary when time to appeal from judgment expires.
(See 11, below.)

Appeal must be taken within 30 days after service of judgment with notice of entry. § 1351, Code. *This time cannot be extended by the court* (§ 784, Code), but same may be extended by party (not attorney) by stipulation acknowledged.

But where the appellant, seasonably and in good faith, serves the notice of appeal either upon the clerk or upon the adverse party or his attorney, but omits through mistake, inadvertence or excusable neglect to serve it upon the other, or to do any other act necessary to perfect the appeal or to stay the execution of the judgment, the court in or to which the appeal is taken, upon proof by affidavit of the facts, may in its discretion permit the omission to be supplied or an amendment to be made upon such terms as justice requires. (§ 1303, Code.)

10. Enter in diary when time to serve a proposed case expires, and also last day to serve notice of application for extension of time to serve case, which is two days before last day to serve case.

Thirty days after service of judgment with notice of entry unless longer time granted by trial judge. (Rule 32, G. P. R.)

11. Receive order denying motion for new trial with notice of entry.
12. Enter in diary when time to appeal therefrom expires.

 Notice Of Appeal — Staying Execution.

Thirty days from service of a copy with notice of entry.
 (§ 1351, Code.)

The usual practice is to serve a copy of the order denying motion for new trial with the copy of the judgment. This is not always done, however.

13. If copy of order denying motion for new trial is not served by adversary, draw and enter same if you wish to review questions of fact in the case.

See Forms Nos. 265 and 266, p. 536-7.

14. Serve copy with notice of entry on adversary.
 15. Draw notice of appeal.

See Form No. 281, p. 559, §§ 1300-1301 and 1355, Code.

Notice of appeal cannot be amended after time to appeal has expired, when the effect of the amendment will be to extend the time of appeal.

16. File notice of appeal with county clerk. (§ 1300, Code.)
 17. Draw undertaking on appeal. See Form No. 290, p. 568, §§ 810, 811, 813, 819, Code; Rule 5, G. P. R.

Undertaking is not required to perfect the appeal, but, except where it is specifically provided by law, it is necessary to stay execution of the judgment.

Security may be waived in writing. (§ 1305, Code.)

Deposit in lieu of undertaking. (§ 1306, Code.)

As to dispensing with, see § 1312, Code; see also §§ 1326, 1327, 1334, 1351 and 1352, Code.

If action is one to recover chattel, draw affidavit and order fixing amount of bond.

Undertaking on appeal need not be approved. (§§ 1335, 1351 Code.) See *Nichols' Prac.*, pp. 3741, 3745, 3765, 3766; *Abbott's Prac. & Forms*, p. 462; *Seabury, City Court Prac.*, p. 897.

The erroneous impression that all undertakings on appeal must be approved before filing is very general, and in

Justification Of Sureties.

consequence the practice has grown up of having them so approved.

18. File undertaking with county clerk before stay expires and before time to appeal expires. (§§ 1307-1334, Code; Rule 4, G. P. R.)

The undertaking and notice of appeal are usually filed together.

19. Serve notice of appeal, and copy of undertaking with notice of filing. (§§ 1300, 1302, 1326, 1334, 796 and 797, Code.)

20. Enter in diary last day for respondent to serve notice of exception to sureties.

Ten days after service of undertaking with notice of filing.
(§ 1335, Code.)

21. Receive notice of exception to sufficiency of sureties.

22. Enter in diary last day for sureties to justify.

Within 10 days after service of notice of exception.
(§ 1335, Code.)

23. Enter in diary last day to serve notice of justification.

At least 5 days' notice of justification must be given.
(§ 1335, Code.)

24. Draw and serve notice of justification of sureties.

See Form No. 292, p. 571.

Five days' notice must be given, and date of justification must be within 10 days after service of notice of exception. (§ 1335, Code.)

25. Enter in diary to notify sureties to justify, and date of justification.

26. Notify sureties when and where to justify.

27. Attend on justification.

28. If sureties justify, and undertaking approved have endorsed by judge:

"I hereby find the sureties on the within undertaking sufficient and hereby allow them and each of them."

(Date)

(Signature)

29. Serve notice of approval of sureties. (§ 1335, Code.)

See Form No. 293, p. 572.

Preparing Proposed Case.

30. If extension of time to make and serve case needed, or if extension by stipulation has been had and further time is needed, ask adversary to stipulate for same *three* days before time to serve case expires.

This is very important as the Court Rules provide that “no order extending the time to serve a case or the time within which the amendments thereto may be served, shall be made, unless the party apply for such order, serve a notice of *two* days upon the adverse parties of his intention to apply therefor stating the time and place of making such application.” (See Rules 32 and 33, G. P. R.)

31. If extension by stipulation refused, apply to court at Special Term for same on two days’ notice. (Rule 32, G. P. R.; §§ 781, 783, Code; 25 *How. Pr.* 438.)
32. Obtain order extending time and serve same with notice of entry.
33. Get opinion or memorandum of judge, if one filed, or make affidavit that none was given, or if given that copy cannot be procured. (Rule 41, G. P. R.)
34. Receive stenographer’s minutes of trial.
35. Prepare proposed case before time to do so expires. (§§ 1353, 997, Code.)

Rules 31, 32, 33, 34, 35, 41, G. P. R. As to whether a case is necessary, *e. g.*, where the appellant is satisfied with the rulings made on the trial and with the findings of fact and desires only to review the conclusions of law based thereon, see § 998, Code (103 *N. Y.* 658; 11 *App. Div.* 316).

The Appellate Court assumes in such a case that there was no evidence from which any other facts could have been found. (135 *N. Y.* 209.)

The case must contain:

So much of the evidence and other proceedings upon the trial as is necessary to present the questions of law upon which exceptions were taken at the trial and also the exceptions taken by the party making the case.

So much of the evidence as is material to the questions to be raised; and if the question of weight of evidence is to be reviewed, a statement that the case contains *all the evidence* taken at the trial.

Proposed Case.

The parties may agree on the facts proven to be inserted in the case, instead of the testimony with the approval of the judge. (Rule 32, G. P. R.)

The denial of a motion to postpone the trial of an action is not conclusive and is the subject of review on appeal.

The disposition of such a motion is a proceeding in the trial, and if excepted to is reviewable, involving a question of law; and the case should contain the affidavit upon which the motion was founded, and the exception to the denial of the motion and annexed to the judgment roll and form part of the papers on appeal; or, the defendant, unsuccessful in his motion to postpone, may withdraw from the trial and allow an inquest and afterwards move at Special Term to set the inquest aside and appeal from an order made thereon. The case should contain only the papers that were before the judge when the motion was decided.

If one party presents affidavits upon a motion to postpone it may be fatal for the other party to rely on oral statements as they will not appear in the appeal-book unless entered on the record; the only safe practice is to obtain leave to supplement the oral statements made in opposition by affidavits and file same so they may also become part of the judgment roll.

Gregg v. Howe, 37 N. Y. Sup. Ct. 421, and see *Garfield v. Colwell*, 8 N. Y. Supp. 380.

No more evidence should be inserted in the case than is material to the questions to be raised and the trial judge should strike out all evidence and other matter not properly inserted. Where by putting testimony of a witness in narrative form a different color is given to it than *in haec verba*, as a practical matter the evidence by question and answer is inserted in the case. The extent to which this may be done rests in the discretion of the trial justice. The reasons of the judge have no place in the case. It has been held that the judge's charge should not be included *in extenso* nor any portion of it not excepted to but it is generally expedient to have it inserted even though not excepted to.

Proposed Case.

Objections made or exceptions taken by the respondent should not be included except to show that parties have assented to a ruling admitting or excluding evidence of a particular character or adopted a special rule of damages or that an impleaded issue has been tried over the respondent's objection (125 N. Y. 187; 135 U. S. 44, 1-2) or in other peculiar cases. But see § 1187, Code.

But to review the question whether a finding was supported by evidence or refusal to charge the jury that there was no evidence upon a certain question or that a finding was not sustained by evidence or that a finding of fact is against the evidence, it must appear that all the evidence bearing upon that point or bearing upon the findings sought to be reviewed appears in the case. Otherwise the appellate court will assume that the evidence was sufficient to sustain the findings of fact.

And where documentary evidence received upon the trial is omitted from the case, findings of fact will not be reviewed as it may have had a bearing upon the determination.

The case should not contain questions withdrawn or answers excluded without objection.

Exhibits should not be included at length unless the judge so directs. It is common practice, however, to insert exhibits upon which the cause of action or defense is founded in full unless they are deeds, bonds, mortgages, checks or papers which can be abstracted. Cumulative or explanatory exhibits should be abstracted if possible. Where appellant desires to print an abstract of an exhibit, he should serve the abstract as a part of the proposed case. The respondent must either accept it or propose as an amendment his counter abstract or demand that it be printed in full.

When a document is excluded which has been offered in evidence, the entire writing rejected or a sufficient statement of its contents, should be included.

If only questions of law are to be raised, all the evidence should not be inserted but only so much as is material to the questions to be reviewed.

Form Of Proposed Case.

The theory of the proposed case is that the appellant will insert all the evidence bearing upon the questions to be raised and the respondent add all he deems necessary to a solution of such questions.

An exception gives notice to the respondent of an intention to raise the questions and put the burden on the respondent of adding any needed proof.

If the proposed case does not contain a statement that it contains *all* the *evidence* he may assume that only questions of law are to be raised; but if the case contains such a statement the respondent must see that nothing essential is omitted.

But in action tried by jury, see 150 *N. Y.* 354.

The lines of each page of the proposed case should be numbered. (Rule 32, G. P. R.)

The following method is suggested for preparing a proposed case:

Case.

SUPREME COURT,

(*Kings*). County.

(SAMUEL SMITH and MARY
SMITH,)

Plaintiffs,

vs.

(JOHN JONES,)

Defendant.

Proposed Case and
Exceptions.

1 The issues joined in the above-entitled action came
2 on for trial before the Hon. (*Samuel T. Maddox*,) a
3 Justice of this Court, and a jury at a Trial Term,
4 (*Part II*,) thereof, in the (*Borough of Brooklyn, City*
5 *of New York*,) on the (*10th*) day of (*June, 1906*.)

6 The plaintiffs appeared by (*J. J. Palmer*,) and the
7 defendant by (*Charles Lend*.)

8 A jury was called and sworn and then the defend-
9 ant's counsel addressed the court: "I move to dismiss
10 the plaintiff's complaint on the ground that it fails
11 to state a cause of action." Decision reserved.

12 Mr. Palmer: I call upon John Jones to produce a

Form Of Proposed Case.

13 statement of account between Smith and Smith and
14 John Jones, dated June 11th, 1903. The paper was
15 produced and submitted to the court.

16 Mr. Palmer then opened the case to the jury.

17 The plaintiffs then to maintain the issues on their
18 part called as a witness John David, who being sworn
19 testified as follows:

A portion of the testimony in the stenographer's
minutes will appear as follows:

Q. What is your name? A. John David.

Q. Do you know the plaintiff in this action? A.
Yes.

Q. Did you ever see him before to-day? A. I have.

Q. How many times? A. Five or more.

Q. Where? A. Different places.

The following is the above changed into narrative
form: (Rule 34, G. P. R.) and the proposed
case would continue as follows:

20 "My name is John David, and know the plaintiff.
21 I have seen him four or five times before to-day at
22 different places."

At the end of the proposed case the following state-
ment should appear:

"The foregoing case and exceptions contains all the
evidence taken upon the trial of this action."

But when a question of the admissibility of evidence
or the form of the question objected to is involved,
it is wise to insert the same and a question or two
preceding *in haec verba*.

Although it is a general rule that the appeal must
be heard upon the pleadings and proofs, if you
represent the appellant you must be aware that
the rule is subject to certain exceptions and that
your opponent may in a proper case introduce
evidence upon the hearing of the appeal in support
of the judgment appealed from. Thus, where rec-
ord evidence has been improperly proved upon the
trial, or where a fact has been assumed on the
trial which might have been established by record
evidence and such evidence was inadvertently
omitted, or where it is evident that the record

Proposed Amendments.

itself cannot be contradicted or varied, so that a new trial would not alter the case, the record may be read by the respondent upon the hearing of the appeal to supply the deficiency and sustain the judgment. (117 *App. Div.* 528.)

But such evidence is never received by an appellate court for the purpose of reversing a judgment.

As to practice in making and serving case, see *Baylies on New Trials and Appeals*, 57 *Barb.* 209.

36. Serve proposed case on opponent before time to do so expires.

Thirty days after service of judgment with notice of entry. (Rule 32, G. P. R.)

37. Enter in diary last day to receive amendments.

Ten days after service of proposed case. (Rule 32, G. P. R.)

38. Receive proposed amendments.

Bear in mind, that if respondent applies to you on last day to serve proposed amendments for an extension of time therefor, it is too late for him to obtain such extension from the court if you deny same, as two days' notice is required. (Rules 32 and 33, G. P. R.)

The following is the usual form of such amendments:

(Form.)

Proposed Amendments.

SUPREME COURT,

(*New York*) County.

(*ROBERT BURNS,*)

(*Plaintiff*)-Appellant,

against

(*FRANK JOHNSON,*)

(*Defendant*)-Respondent.

Sir:

PLEASE TAKE NOTICE that the (*defendant*) hereby proposes the following amendments to the proposed case

Settlement Of Case.

containing exceptions heretofore served by the (*plaintiff*) and appellant herein, viz.:

First Amendment: At page 7, line 22, strike out the words "to which ruling defendant duly excepted."

Second Amendment: At page 8, line 9, strike out word "stocks" and insert the word "bonds."

Third Amendment: At page 11, line 4, after the words "without notice to me" add "except as I heretofore stated."

Fourth Amendment: At page 11, line 9, insert after the word "will" the word "not."

(BUDD & BUDD,)

Attorneys for (*Deft.*)-Respt.

To (GUY SMITHERS,) Esq.,

Attorney for (*Plff.*)-Applt.

Indorsement on Amendments.

[Title:]

Sir:

PLEASE TAKE NOTICE that the within is a copy of the proposed amendments by the (*defendant*) and respondent to the case proposed by the (*plaintiff*) and appellant in this action.

Dated (*New York, Sept. 15, 1906.*)

(BUDD & BUDD,)

Attys. for (*Deft.*)-Respt.

To (GUY SMITHERS,) Esq.,

Attorney for (*Plff.*)-Applt.

39. Enter in diary last day to serve notice of settlement.

Within 4 days after service of proposed amendments.
(Rule 32, G. P. R.)

40. If proposed amendments are served, mark them "allowed" or "disallowed." (Rule 32, G. P. R.) The amendments proposed are retained by the appellant until submitted to the judge on settlement.

41. Draw notice of settlement of case and exceptions before the judge who tried the action and serve within four days from service of proposed amendments. The date of settlement stated therein must not be less than four nor more

Notice Of Settlement.

than ten days after service of notice. (Rule 32, G. P. R. § 997, Code.)

(Form.)

Notice of Settlement.

SUPREME COURT,

(*Kings*) County.

(SAMUEL SMITH and MARY
SMITH,)

Plaintiffs,

against

(JOHN JONES,)

Defendant.

Sir:

TAKE NOTICE that the proposed case in this action with the proposed amendments, will be submitted to Mr. Justice (*Kelly*), before whom this action was tried, for settlement at his Chambers in the County Court House, in the (*Borough of Brooklyn, City of New York*), on the (10th) of (*October, 1906*), at 10.30 a. m.

Dated (*New York, October 6, 1906*.)

Yours,

(BUDD & BUDD,)

Attys. for (*plaintiff*).

To (*GUY SMITHERS*), Esq.,

Atty. for (*defendant*).

42. Enter in diary date of settlement.
43. Prepare memorandum for court on settlement, and note that amendments must contain references to pages of stenographer's minutes. (Rule 32, G. P. R.)
44. Settlement. (Rule 32, 34, G. P. R.; § 997, Code.)

Submit to judge on settlement.

1. Proposed case.

2. Proposed amendments marked as above.

Settlement Of Case.

3. Stenographer's minutes of trial.
4. Exhibits or models.
5. Memorandum as to settlement.

The settlement itself is usually informal. Affidavits may be presented. The judge's recollection assisted by the stenographer's minutes controls. Where there is a dispute see:

34 *Hun.* 547; 112 *N. Y.* 542; 40 *App. Div.* 86.

Where case is tried before referee he settles it and orders it on file in county clerk's office and in the Appellate Division.

On resettlement see:

112 *N. Y.* 592; 119 *N. Y.* 638; 34 *Hun.* 547; 7 *N. Y. Supp.* 321; 7 *N. Y. Supp.* 69; 28 *App. Div.* 504; 35 *App. Div.* 379.

45. See that judge signs an order settling the case and ordering it on file.

This order is usually endorsed on the original proposed case submitted to the judge.

46. When case settled, obtain original proposed case and amendments submitted, *i. e.*, the proposed case with amendments marked "allowed" and "disallowed" by the attorney and the judge's order settling and filing same and exhibits and models.

The law provides that within ten days after settlement the original case signed by the judge shall be filed with the clerk. During these ten days the attorney has possession of the original papers now in disorder on account of the settlement, and he is to cause an engrossed copy to be made and, upon filing the original with the clerk, have the engrossed copy certified by the clerk and, when so certified, ordered on file and to be annexed to the judgment roll by the judge. If the attorney is unable within ten days to finish using and to file the original case, obtain extension of time to file original case as provided by Rule 35, G. P. R., and to comply with such Rule. File the original case, signed by the

Filing Settled Case.

judge on the printed appeal record, which contains the case and the stipulation, and order settling and filing same with the clerk of the court within said ten days or within the time as extended.

This time has proved so inadequate in practice that very frequently attorneys have failed to comply with Rule 35, G. P. R., but much delay in opening default and embarrassment may follow a failure to comply strictly with this rule. (Rule 35, G. P. R., 9 *App. Div.* 406; 32 *Misc.* 657.)

If he fails to comply with this rule he will be heard only upon the judgment roll. (11 *App. Div.* 626.)

This difficulty may be avoided by the appellant by adding at the end of the proposed case the following proposed stipulation:

“It is hereby stipulated that the within printed case on appeal may be ordered filed as and for the original case on appeal as settled herein.”

If accepted by the respondent this stipulation is usually treated as a waiver of the rule requiring the “engrossed copy” to be filed within ten days after settlement.

47. Enter in diary when case must be filed with County Clerk.

Ten days after settlement. (Rule 35, G. P. R.)

It is the prevailing practice not to engross a case as settled, but to proceed at once to print the case, and to file a copy of the printed case in lieu of the engrossed case by stipulation between the attorneys.

48. Enter in diary last day to serve three copies of printed case on adversary, and to file with the clerk of the Appellate Division the original printed case with a proof of service by affidavit of such three copies.

Twenty days after settlement and filing of case.
(Rule 41, G. P. R.)

The following has been promulgated by the Appellate Division, First Department:

Statement by Supreme Court — Appellate Division —
First Department.

Rule 41 of the General Rules of Practice provides in substance that the party whose duty it is to furnish the record shall cause a printed copy of the requisite papers to be filed in the office of the clerk of the Appellate Division within twenty days after the appeal has been taken; and further, that "if the appellant fails to file and serve the papers as aforesaid the respondent may move on any motion day, upon three days' notice, to dismiss the appeal." If the appellant is unable within that time to make, serve and file his record upon appeal, it is his duty to have the time extended either by consent or order; and if he neglects to obtain such extension, he suffers a default.

The application for an extension must always be made in the court below or to a justice thereof; and where a motion to dismiss is made in this court, and it appears that the appellant has suffered a default in filing and serving the papers specified in Rule 41, nothing remains, if the rule is to be enforced, but for this court to dismiss the appeal. Excuses for delay may very properly be presented to the court below on an application to extend the time, but they cannot be considered when offered at the Appellate Division in opposition to a motion to dismiss — the default being shown or admitted. This has been frequently called to the attention of the bar, and if Rule 41 is to have any force and effect, it is certain from its reading that, upon such default being made to appear, it becomes the duty of this court to dismiss the appeal.

If at the time the motion to dismiss is heard it should appear that a motion is pending to open the default and have the time extended this court may properly hold the motion to await the determination of that application in the court below; but further indulgence cannot be extended to those who neglect to comply with the rule.

We have deemed it proper to call attention again to this subject, to the end that those in a position to suffer as a result of their neglect to apply in the court below for an extension of time will have no reason to complain of the lack of adequate notice.

Printing Case.

49. Prepare papers for printed case. See § 796, Code; Rule 43, G. P. R.; Rule 5, Ct. Appeals.

Two appeals should not appear in one appeal book although tried together and settled on one proposed case.

The following is a proper arrangement of papers in a case on appeal from judgment:

The name describing each paper should be placed at the top thereof.

(a) Index.

This is necessary. (Rule 43, G. P. R.) It must specify all papers, and give the names of all witnesses, and the designation by the stenographer by number of all exhibits, and the number of the page in the case where they appear.

The nature of each exhibit should be indicated by a concise description, and the folio at which it was admitted in evidence given.

Arrange titles of papers alphabetically and names of witnesses alphabetically or chronologically. The stenographer's designation of the exhibits by letter or number should control the order in which they are printed. Plaintiff's exhibits should be first.

(b) Statement under Rule 41.

While the rule requires that this statement should contain merely the time of the beginning of the action and of the service of the respective pleadings, the names of the original parties in full, and any change in the parties if such has taken place, it is the practice and is very advisable that this statement should be very full, and should give a concise history of the action, even though not required by the rule. As, for instance, any change that has taken place in the attorneys for any of the parties.

(Form.)

Statement under Rule 41.

SUPREME COURT — APPELLATE DIVISION.
(FIRST) DEPARTMENT.

(CHARLES W. COLTON,)

Plaintiff-Appellant,

vs.

(JAMES J. RAYMOND, as President of A. A. Vantine & Company; James J. Raymond, Edward A. Raymond, Irving E. Raymond, Albert B. Kutscher, Isaac D. Hurlbutt, Charles D. McGrath and the President and Directors of the Manhattan Company,)

Defendants-Respondents.

STATEMENT UNDER RULE 41.

This action was commenced by the service of a summons and complaint on defendants, on March 6, 1902.

The amended complaint was served May 14, 1902.

The answers of all the defendants were served on July 3, 1902.

The reply was served July 17, 1902.

Plaintiff's name is Charles W. Colton.

The original defendants names are: James J. Raymond, as President of A. A. Vantine & Company; James J. Raymond, Grace C. Raymond, Edward A. Raymond, Irving E. Raymond and the President and Directors of the Manhattan Company.

Plaintiff's attorneys, until judgment, were Messrs. Otis & Pressinger.

Printed Case — Order Of Papers.

Messrs. *Lockwood & Hill* are attorneys for all the defendants except the President and Directors of the *Manhattan Company*.

Messrs. *Stern & Rushmore* are attorneys for the defendants President and Directors of the *Manhattan Company*.

By an order entered herein on *May 9th*, 1904, Messrs. *Delafield & Longfellow* were substituted for Messrs. *Otis & Pressinger* as attorneys for the plaintiff.

The defendant *James I. Raymond* died *April 18*, 1905, and by an order entered herein on *December 1*, 1905, *Irving E. Raymond*, as President of *A. A. Vantine Company*, was substituted as defendant in place of *James I. Raymond*, as such President, and *Grace C. Raymond*, *Irving E. Raymond*, *Edward A. Raymond* and *Adolph Van Rein*, as executors of the last will and testament of *James I. Raymond*, deceased, were substituted as defendants in place of *James I. Raymond*, individually.

There has been no change of parties or attorneys herein except as above stated.

As to order of papers after statement under Rule 41, see 105 *App. Div.* 476.

(c) Notice of Appeal.

(d) Pleadings, and all papers on file with judgment roll, in their chronological order, *i. e.*:

Summons.

Complaint.

Answer.

Reply.

Extract of minutes (if in jury case).

Judgment.

Order denying motion for new trial.

Order setting aside verdict or granting new trial.

Any other papers used.

In the First Department all titles and verifications must be set out in full, but in the Second Department it has been held that titles should be stated but once, and verifications should be merely noted, unless they are material to some questions on appeal. (32 *Misc.* 165.)

Affidavit Of No Opinion.

- (e) Case.
 Evidence.
 Charge of judge; requests to charge and exceptions.
 Verdict.
 Motions, if any.
 Exhibits, if not in the evidence.

If questions of fact are to be reviewed, there must appear in the case itself substantially the statement that

“The foregoing contains all the evidence and testimony offered and given upon the trial of the action.”

- (f) Opinion, or affidavit of no opinion. (Rule 41, G. P. R.)

(Form.)

Affidavit of No Opinion.

SUPREME COURT,

(*New York*) County.

(*ARTHUR JUDSON,*)
 Plaintiff,

against

(*HERMAN CONRAD,*)
 Defendant.

State of New York,
 County of (*New York*), ss.:

(*Robert Johnson,*) being duly sworn, says, I am one of the attorneys for the appellant herein. No opinion or memorandum was given by the trial judge in this case.

(*ROBERT JOHNSON.*)

Sworn to before me this (3d) day }
 of (*October, 1906.*) }

(*HENRY BURDER,*)

Notary Public,

(*N. Y.*) Co., No. 5.

Stipulation And Order Settling Case.

(g) STIPULATION SETTLING CASE.

IT IS HEREBY STIPULATED that the foregoing case contains all the evidence introduced upon the trial of this action, and the same be settled and ordered to be filed and annexed to the judgment roll herein, and that the foregoing printed copy be ordered to be filed in the office of the Clerk of this court in lieu of the engrossed copy required by the rules.

Dated (*New York, September 21, 1906.*)

(BUDD & BUDD,)

Attorneys for (*Plaintiff*)-Appellant.

(FRED CHOATE,)

Attorney for (*Defendant*)-Respondent.

(h) ORDER SETTLING CASE.

On the above stipulation it is hereby ordered that the foregoing case and exceptions which contains all the evidence introduced on the trial of this action, be and the same is hereby settled as the case and exceptions herein, and the foregoing printed copy is hereby ordered to be filed in the office of the Clerk of this court in lieu of the engrossed copy required by the rules.

Dated (*New York, September 22, 1906.*)

(JAMES FITZGERALD.)

J. S. C.

- (i) Certificate of clerk of court, under § 1353, Code, and order directing case to be filed and order directing filing in Appellate Division. (See 91 *App. Div.* 372.)

Or according to common practice the following stipulation and order are used in place of above:

(j) STIPULATION WAIVING CERTIFICATION.

Pursuant to section 3301 of the Code of Civil Procedure, it is hereby stipulated that the foregoing consists of true and correct copies of the notice of appeal, the judgment roll, and case and exceptions as settled, order denying motion for a new trial,* and the whole thereof, now on file in the office of the Clerk of the County of (*New York*;))

* Insert where proper and necessary "opinion of the trial court," or any other paper, not part of the judgment roll, but included in the printed case.

 Waiver Of Certification — Order Filing Record.

and certification thereof by the Clerk of said county, pursuant to section 1353 is hereby waived.

Dated (*New York, September 21, 1906.*)

(BUDD & BUDD,)

Attorneys for (*plaintiff-appellant.*)

(FRED CHOATE,)

Attorney for (*defendant-respondent.*)

(*k*) ORDER FILING RECORD IN APPELLATE DIVISION.

Pursuant to section 1353 of the Code of Civil Procedure, it is

ORDERED that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court in the (*First*) Judicial Department.

Dated (*New York, September 22, 1906.*)

(JAMES FITZGERALD,)

J. S. C.

Where there is no case made and settled the above stipulation and order do not apply and are not necessary. In such case the only requirement to be fulfilled is to have a stipulation of waiver of certification or a certificate of the clerk.

As to the use of italics in case, see 12 *N. Y. Supp.* 870.

50. Send papers to printer.

Keep in mind the last day to serve and file the printed appeal book.

51. Receive proof of appeal book.

52. Submit same to opposing counsel for correction.

53. Receive proof with objections.

54. Agree upon changes.

55. When changes agreed upon have case printed.

Thirty copies are usually ordered (unless intention is to appeal to Court of Appeals, when 60 copies are ordered unless there are three or more attorneys when 70 or more copies will be required).

Blanks are usually left in three copies for signatures to stipulations and orders in case, and the names printed in the remaining copies.

56. Receive printed case on appeal from printer.

Filing Record In Appellate Division.

57. Within ten days after settlement or before expiration of time as extended, have stipulations settling case, waiving certification and consenting to filing of printed copy with county clerk in three copies signed by attorney for respondent.
58. If respondent declines to sign such stipulations, comply at once with Rule 35 by filing the original (typewritten) case and amendments as they came from the judge, and an engrossed copy of the case as settled by the judge with the county clerk and have printed case certified by the clerk, or obtain order extending time to file case from the court.

Rules 35 and 41, G. P. R.; § 1353, Code. See 26 *How.* 375.

It is very unusual for attorneys to require certification of the case, and where such a refusal to assent to the usual stipulations is met after the case is printed, certain changes in the printed case become necessary. The clerk's certificate must be added, and the orders settling the case and ordering it on file must be changed as follows: Instead of "on the annexed stipulation, etc.," must be inserted "upon the annexed certificate of the clerk of this court that the foregoing is a true copy of the case and exceptions, the judgment roll and all other papers on file herein, etc."

59. Have the orders settling case and ordering it on file in the three copies with blanks signed by the trial judge.
60. File one signed copy of the printed case with the county clerk.
61. Within 20 days after settlement serve three copies of printed case on attorney for respondent and make affidavit of such service. (Rule 41, G. P. R., and see Rule 6, 1st Dept. Rules. In Second Department see also Enumerated Cal. Rule, 2d. Dept. Rules.)
62. Within twenty days after settlement file a signed copy of case with proof by affidavit of due and timely service of three copies on adversary with clerk of Appellate Division.

See number 7, First Dept., p. 60.

63. The special rules of each department should now be consulted.

FIRST DEPARTMENT.

1. Enter in diary last day to serve and file appellant's points, notice of argument and note of issue.

Fifteen days before first day of term for which case is to be noticed. (Rule 6, 1st Dept. Rules.)

2. Prepare and print appellant's points.

As to form of points and citation of authorities.
(Rules 40, 43, G. P. R.; Rule 5, Court of Appeals Rules and § 796, Code.)

3. Prepare notice of argument for the next term.
4. At least 15 days before first day of term serve notice of argument, obtain admission of service and serve three copies of appellant's points.
5. Prepare affidavit of service of three copies of points on respondent's attorneys, and if admission of service of notice of argument has not been obtained prepare affidavit of service of same.
6. Prepare note of issue.

It must state date on which notice of appeal was served. (Rule 5, 1st Dept. Rules.)

Claim for preference must be stated. (§ 793, Code.)

7. Fifteen days before the commencement of the term for which the appeal is noticed, file with clerk of Appellate Division:

(a) Notice of argument, with proof of service upon respondent's attorney by admission or affidavit.

(b) Sixteen copies of appellant's points with proof of service by affidavit of three copies on respondent's attorney.

(c) Sixteen copies of printed case.

8. Enter in diary last day to receive respondent's points.

Ten days after service of appellant's points. (Rule 6, 1st Dept. Rules.)

9. Receive respondent's points.

Calendar Practice — Second Department.

10. Enter in diary last day on which to serve points in reply.

Five days after receipt of respondent's points.
(Rule 6, 1st Dept. Rules.)

11. Within five days after receipt of respondent's points prepare and print points in reply.
12. Within same time serve three copies of points in reply on respondent's attorney; and
13. File with clerk of Appellate Division 16 copies of points in reply and proof by affidavit of service of three copies on respondent's attorney.

At any time after filing note of issue and before case is placed on day calendar the attorneys, by written consent, may set the case down for a future day prior to the third Thursday. This consent must be filed with the clerk before the case is placed on the day calendar. (Rule 6, 1st Dept. Rules.)

At any time after the papers upon which the appeal is to be heard and the printed points have been filed with the clerk, as required by Rule 41 and Rule 6, First Dept. Rules, either party may, by written stipulation, filed with the clerk, submit the appeal on such papers. (Rule 7, 1st Dept. Rules.)

IN SECOND DEPARTMENT.

1. Enter in diary last day to file note of issue, and serve notice of argument.

Eight days before first day of term for which appeal is noticed for argument. (Rule 39, G. P. R.)

2. Prepare notice of argument for the next term, serve same, and obtain admission of service.
3. Prepare note of issue.

It must state date on which notice of appeal was served.

Claim for preference must be stated, and copy of order granting same attached. (§ 793, Code; Rule 8, Cal. Rules, 2d Dept.)

4. Eight days before the first day of the term for which the appeal is noticed, file with the clerk of the Appellate Division:

- (a) Notice of argument, with proof by admission or affidavit of service upon respondent's attorney.

- (b) Note of issue.

It is good practice and convenient to also file at the time 16 copies of printed case with proof by admission or affidavit of service of three copies on respondent's attorney. These may, however, be filed any time before argument.

5. Enter in diary last day to serve and file appellant's points.

Ten days before appeal is placed on the day calendar. (Enum. Cal. Rule, 2d Dept. Rules.)

6. Prepare and print points.

As to form and citation of authorities, see Rules 40 and 43, G. P. R.; Rule 10, 2d Dept. Rules, requires the name of counsel who is to make the argument to be endorsed on the first page, *e. g.*, "To be argued by Albert Arnold." (See also Rule 12, 2d Dept. Rules, and Rule 5, Court of Appeals.)

7. Ten days before appeal is placed on day calendar serve three copies of points on respondent's attorney and obtain admission of service; and
8. File with the clerk of Appellate Division 16 copies of points with proof by admission or affidavit of service of three copies on respondent's attorney. (Enum. Cal. Rule.)

9. Enter in diary last day to receive respondent's points.

Five days after service of appellant's points.
(Enum. Cal. Rule, 2d Dept. Rules.)

Calendar Practice — Third Department.

10. Receive respondent's points.
11. Enter in diary last day on which to serve and file points in reply.

Three days after receipt of respondent's points.
(Enum. Cal. Rule, 2d Dept. Rules.)

12. Prepare and print points in reply.
13. Within three days after receipt of respondent's points, serve three copies of points in reply on respondent's attorney, obtain admission of service; and
14. File with clerk of Appellate Division 16 copies of points in reply, with proof by affidavit or admission of service of three copies on respondent's attorney.

Causes can be reserved for a day subsequent to the time when they would be reached in their order, only when a stipulation to that effect is filed with the clerk before the day calendar is made up (1 p. m.). (Rule 5, 2d Dept. Rules.)

IN THIRD DEPARTMENT.

1. Enter in diary last day in which to serve appellant's points.

Twenty days before the first day of term for which appeal is to be noticed for argument. (Rule 15, 3d Dept. Rules.)

2. Prepare and print points.

As to form of points, and citation of authorities, see Rules 40 and 43, G. P. R. (See Rule 9, also statement required.) Rule 10 requires name and residence of counsel who is to argue appeal to be endorsed on papers. (Rule 5, Court of Appeals.)

3. Before the time expires, serve three copies of points on respondent's attorney and obtain admission of service.

This must be done 20 days before first day of term for which appeal is to be noticed.

4. Prepare notice of argument for the next term.
5. At least eight days before the first day of the term serve same and obtain admission of service. (Rule 39, G. P. R.)
6. Enter in diary:
 1. Last day to receive respondent's points.
Eight days before the first day of the term for which appeal is noticed. (Rule II, 3d Rept. Rules.)
 2. Last day on which to file note of issue.
Eight days before commencement of term for which appeal is noticed for argument. (Rule 39, G. P. R.)
7. Prepare note of issue:

State that appeal is to be placed on general calendar. (Rule 1, 3d Dept. Rules.)

State date on which notice of appeal was served.
Claim for preference must be stated; or copy of order granting preference if any must accompany it. (Rule 3, 3d Dept. Rules.)
8. Eight days before first day of term for which appeal is noticed, file with the Clerk of the Appellate Division a note of issue. (Rule 39, G. P. R.)
9. Receive three copies of respondent's points.
10. Enter in diary last day on which to serve reply points.
Three days before the first day of the term for which appeal is noticed. (Rule 15, 3d Dept. Rules.)
Service may be made either personally or by mail, but service by mail does not extend time within which answering brief may be served. (Rule 15, 3d Dept. Rules.)
11. Prepare and print points in reply.
12. Serve points in reply.
Three days before the first day of the term for which appeal is noticed. (Rule 15, 3d Dept. Rules.)

13. *Before argument* file with Clerk of Appellate Division 13 copies of printed case and printed points.
As to passing and reserving cases by consent, see Rules 6 and 13.

IN FOURTH DEPARTMENT.

1. Enter in diary:

- (a) Last day to serve 16 copies of printed case.
- (b) Last day to serve three copies of points on respondent's attorney.
- (c) Last day to file 16 copies of appellant's points.
Fifteen days after service of the printed case. (Rule 9, 4th Dept. Rules.)

2. Prepare and print appellant's points:

As to form of points, and citation of authorities, see Rules 40 and 43, G. P. R., and § 796, Code. See Rule 10, as to statement required; Rule 11, requires name and address of counsel who argues appeal to be endorsed on brief. (And see Rule 5, Court of Appeals.)

3. *Fifteen days after service of printed case:*

- 1. Serve three copies of points on respondent's attorney, obtain admission of service.
- 2. File 16 copies of printed case.
- 3. File 16 copies of points, with proof of service of three copies on respondent's attorney.
(Rule 9, 4th Dept. Rules.)

4. Enter in diary last day to receive respondent's points.

Must be served seven days after service of appellant's points. (Rule 9.)

5. Receive respondent's points.

6. Enter in diary last day to serve answering brief.

Five days after service of respondent's brief.
(Rule 9.)

7. Prepare and print answering brief.

Argument.

8. *Within five days after receipt of respondent's points.*

1. Serve three copies of answering brief.
2. File 16 copies of answering brief with proof of service of three copies on respondent's attorney.

9. Enter in diary:

1. Last day to serve notice of argument.
2. Last day to file note of issue.

Eight days before first day of term. (Rule 39, G. P. R.)

10. Prepare and serve notice of argument.

11. Prepare note of issue.

State date on which notice of appeal served, claim of preference must be set forth; and copy of order granting preference, if any, must be attached. (Rule 2, 4th Dept. Rules.)

12. File note of issue.

As to reservation and submission of cases and exchange of cases, see Rules 8 and 12.

64. *Argument:*

There is nothing for counsel to do on day of argument but to answer the call of the calendar and submit the case when called or argue it when reached, except in the Second and Third Departments as hereinbefore indicated. Not more than one counsel shall be heard on each side unless the court otherwise orders, and not more than one hour will be allowed for argument to each side, except by special permission, which is very seldom granted. Number of counsel engaged does not extend time (Rule 47, G. P. R.); but as to negligence in the Third Department, see Rule 12 of that Department. No brief or memorandum will be received after argument, except by special permission, which is rarely granted.

Counsel for the appellant argues first. Then counsel for respondent and the court usually permits a few minutes to appellant to close.

Judgment of reversal by default will not be allowed, but judgment of affirmance may be taken by default.

HINTS ON APPEAL PROCEDURE.

II.

From judgments.

Supreme Court, Special Term, to Appellate Division.

From judgment on decision of judge.

As proposed findings of fact and conclusions of law must be submitted to the court before the argument at the close of the testimony, i. e., final submission of cause (1023 Code, 113 App. Div. 254), time must be obtained from the court to submit same after opinion is given if attorney desires to follow the prevailing practice and preserve his technical right.

1. If any memorandum or opinion given by judge, secure copy of same.
2. Order copy of stenographer's minutes.
3. Get exhibits.
4. If time has been obtained as above indicated, prepare your proposed decision, findings of fact, and conclusions of law for submission on settlement of decision. (See § 1022, Code.)

Sec. 1023, Code, provides that before the cause is finally submitted to the court or within such time thereafter and before the decision is rendered, as the court allows, the attorney for either party may submit proposed findings of fact and conclusions of law; and that at or before the time when the decision is rendered, the court must dispose of same.

It has been the practice not to submit proposed findings of fact and conclusions of law until the judge has indicated his determination of the issues. In the First Department this usually appears in the New York Law Journal. In other departments by memorandum filed or correspondence with attorneys. This is dangerous practice, however, as the court may refuse to pass thereon after final submission. (113 App. Div. 254.)

Taking Appeal.

5. Submit same to judge upon settlement.

The judge may make findings or conclusions as requested by both parties; and direct that an engrossed copy of the decision and findings be presented for signature. In this case it is the duty of the prevailing party to prepare and submit the proposed findings of fact and conclusions of law. The defeated party should be careful to see that such of his proposed findings or conclusions as are found by the judge are included in this engrossed copy of the decision.

6. If usual stay of execution and additional time to make a case not granted in opinion or memorandum given by judge, apply for same on settlement of decision or move, on notice, for same before judge who tried case.
7. See that decree or judgment contains stay of execution and gives additional time to make and serve case or that time is obtained on motion. Draw and enter order granting stay and additional time to make case. Serve same with notice of entry on adversary.
8. When decision signed, and a copy thereof served with notice of filing, together with a copy of the judgment entered thereon with notice of entry.

Enter in diary:

1. Last day to serve and file exceptions to decision.

Ten days from the service of a copy of the judgment with notice of entry. (§§ 994 and 1351, Code.)

2. Last day to appeal and to serve proposed case.

Thirty days from the service of a copy of the judgment and notice of entry, unless longer time granted by judge. (§ 1351, Code. Rule 41, G. P. R.)

3. When stay expires.

4. If judgment is interlocutory — last day to move at Appellate Division for new trial. (See § 1001, Code.)

9. Before time expires, prepare notice of exceptions to findings of fact and conclusions of law.

Record On Appeal.

This notice must state specifically what portion of the decision, *e. g.*, which findings of fact and conclusions of law are excepted to, and which refusals to find as requested. See Forms Nos. 279, 280, p. 556-7.

10. Within ten days after receipt of judgment with notice of entry, file exceptions with clerk of court and serve same on attorney for adversary. (§ 994, Code.)

15 to 64 of Appeals from Judgments I (p. 40, *supra*) may now be followed, but in making up the case on appeal the following papers constitute the case:

(See § 997.) As to order, see 105 *App. Div.* 477.
Statement under Rule 41.
Notice of appeal.

Pleadings and all papers on file with the judgment roll, in chronological sequence as they appear in the action, viz.:

Summons.

Complaint.

Answer.

Reply.

Order of reference (if any).

Report of referee (if any).

Decision.

Judgment.

Notice of exceptions.

And any other papers used.

Case:

Evidence.

Exhibits.

The case must also contain a statement that it contains *all the evidence* taken upon the trial of the action.

Stipulation settling case. } See Forms,
Order settling case. } pp. 57-58.

Stipulation waiving certification
or

Certificate of the clerk of the court.

Waiving Certification.

(Form.)

Stipulation Waiving Certification.

Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated that the foregoing consists of true and correct copies of the notice of appeal, the judgment roll, and case and exceptions as settled, decision, proposed findings of fact and conclusions of law, exceptions to findings and decision* and the whole thereof, now on file in the office of the Clerk of the County of (*New York*;) and certification thereof by the Clerk, pursuant to Section 1353 of the Code of Civil Procedure is hereby waived.

Dated, (*New York, September 21, 1906.*)

(*BUDD & BUDD,*)

Attorneys for (*plaintiff*)-appellant.

(*FRED CHOATE,*)

Attorney for (*defendant*)-respondent.

Opinion of the court or referee or affidavit of
no opinion.

Order filing record in Appellate Division.

This order is necessary only in appeals
heard on a case and exceptions. (§ 997,
Code.)

* Insert any other papers not part of the judgment roll, but included in the printed case.

HINTS ON APPEAL PROCEDURE.

III.

From Interlocutory Judgments on Demurrers.

Supreme Court, Special Term, to Appellate Division.

An "order" or "decision" overruling or sustaining a demurrer is not appealable.

An appeal can be taken from the interlocutory judgment entered thereon. The party can, however, appeal from the final judgment and specify the interlocutory judgment in the notice of appeal and thus appeal from both. The usual practice is to appeal from the interlocutory judgment.

Where the interlocutory judgment overrules the demurrer with leave to plead upon terms the question arises, what step should be taken where the attorney does not wish to plead but desires to appeal from interlocutory judgment and herein two cases arise:

(A.) Where a demurrer to a complaint is overruled and leave given to answer upon terms with a direction that final judgment be entered upon failure to comply therewith.

In this event the practice is to obtain by written stipulation extension of time of appellant to plead until twenty days after the entry of the order on the determination of the appeal.

(Form.)

Stipulation Extending Time to Answer Pending Appeal.

NEW YORK SUPREME COURT, (*Erie*) County.

(HARRY C. SOMER,)

Plaintiff,

against

(THE ASSOCIATED PRINTERS,)

Defendant.

Interlocutory judgment having been entered herein on the (10th) day of (*May*, 1907) overruling the demurrer of the defendant

Extending Time To Answer.

to the complaint herein with leave to the defendant to withdraw the demurrer and answer within twenty days upon payment of costs and providing that in default of compliance by the defendant with the terms of said interlocutory judgment, final judgment should be entered against the defendant for the relief demanded in the complaint; and the defendant having appealed to the Supreme Court, Appellate Division, (*Fourth*) Department,

It is hereby stipulated that the defendant herein, (*The Associated Printers*,) may have twenty days from the entry and service of judgment on the final determination of the Supreme Court, Appellate Division, (*Fourth*) Department, in this action in which to serve its answer to the complaint of the plaintiff herein.

And it is further stipulated and agreed, that all proceedings herein be stayed pending the determination of said appeal and until the entry and service of said judgment.

It is expressly understood and agreed that the above stipulation is made with the agreement and understanding that said appeal shall be argued at the first day of the next term of said Supreme Court, Appellate Division, (*Fourth*) Department, to wit, the (1st) day of (*October*, 1907) or as soon thereafter as counsel can be heard.

Dated, (*May 26*, 1907.)

(*H. B. BUTTERFIELD*,)

Attorney for (*Plaintiff*,)

(*CAREY & COOKE*,)

Attorneys for (*Defendant*.)

In case the attorney refuses to so stipulate some attorneys claim a stay of entry of judgment pending the appeal and entry of an order on the determination thereof is the proper practice, since an extension of time to answer obtained from the court is inconsistent with the interposition of the demurrer and appeal therefrom, nevertheless most attorneys failing to obtain extension to answer by consent as above, obtain from the court an extension of time to answer until twenty days after the entry of an order on the determination of the appeal from the interlocutory judgment.

Stay Pending Appeal.

(Form.)

**Order Granting Stay Pending Appeal from Interlocutory Judgment
Overruling Demurrer.**SUPREME COURT,
(*Erie*) County.

(THE LOCKWOOD COMPANY,)	} Plaintiff,
against	
(FRANK PRYOR & CALVIN MOTT,)	
	Defendants.

Upon reading and filing the annexed affidavit of (*Frank Pryor*,) defendant herein, verified (*July 28, 1906*,) and on reading the supplemental summons and complaint herein; the demurrer interposed thereto by the above named defendants; the decision, findings and order of Hon. (*D. K. Kenefick*,) overruling the same, and interlocutory judgment entered thereon, in (*Erie*) County Clerk's office, (*July 9, 1906*) and the proposed notice of appeal from said judgment, to be taken by said defendants, and on motion of (*Charles Kelsey*,) of counsel for said defendants, it is

ORDERED, that all proceedings under and pursuant to said interlocutory judgment be and the same are hereby stayed until the determination of said appeal therefrom, and an entry of an order thereon without security. And it is further

ORDERED, that should the said appeal be affirmed or dismissed, in either such event, the time of the defendants to serve their answer to the (*supplemental*) complaint, herein, is hereby extended to and until twenty days after the entry of the order of the Appellate Division, on the determination of the said appeal herein.

(FREDERICK W. KRUSE,)

J. S. P.

(*July 28, 1906.*)

 Stay Pending Appeal.

(Form.)

Affidavit on Application for Foregoing Order.SUPREME COURT, (*Erie*) County.

(THE LOCKWOOD COMPANY,)

Plaintiff,

against

(FRANK PRYOR AND CALVIN MOTT,)

Defendants.

 STATE OF NEW YORK, }
 County of (*Alleghany*,) } ss.:

FRANK PRYOR, being duly sworn, deposes and says: That he resides at (*Albion, New York*,) and is (*an attorney and counselor-at-law, having an office for the practice of law at Albion, aforesaid*;) that deponent is one of the defendants in the above entitled action, and has had a personal knowledge of all proceedings heretofore had herein; that deponent on the (*12th*) day of (*July, 1906*) served a notice of appeal, herein, to the Appellate Division, from the interlocutory judgment entered upon the decision of Mr. Justice (*D. K. Kenefick*,) overruling the demurrer to the (*supplemental*) complaint herein entered in the office of the Clerk of (*Erie*) County, on the (*9th*) day of (*July, 1906*;) that said judgment provides that said demurrer be overruled with leave, however, to said defendants (*Frank Pryor and Calvin Mott*,) within twenty days after the service of a copy of said interlocutory judgment, on payment of costs of said demurrer, to answer the (*supplemental*) complaint herein; and in case of failure of said defendants to comply with the terms of said judgment, said plaintiff should be entirely entitled to final judgment to be determined and entered according to law; that a copy of said interlocutory judgment with a notice of the entry thereof, was served on the attorney for said defendants on the (*10th*) day of (*July, 1906*.)

Deponent further says, that said demurrer was taken to said (*supplemental*) complaint, upon the ground that it appears on the face thereof, that (*there is a defect in the parties defendant*,) and

Stay Pending Appeal.

also upon the ground that said (*supplemental*) complaint does not state a cause of action against defendant;

Deponent further says, that in his opinion after an examination of the authorities, he believes that said demurrer was well taken, that there is a fair reason to believe that said demurrer will be sustained upon said appeal to said Appellate Division. That in case said judgment is affirmed or the appeal is dismissed, the defendant intends in good faith to answer on the merits of the case and that deponent has fully and fairly stated the case to (*Ver-non Davis*,) one of his attorneys of record herein who resides at (*76 West Seventy-second street in the Borough of Manhattan, City of New York*,) and that defendants have a good and substantial defense to the cause of action pleaded in the complaint or some part thereof upon the merits as he is advised by his said counsel after such statement and verily believes. That said demurring defendants will suffer serious inconvenience, and loss if obliged to answer said complaint, and try said action prior to the determination of said appeal upon said demurrer; (*that a very large sum of money is involved as well as the personal honor and reputation of said deceased defendant*), and therefore this deponent prays for an order staying all proceedings as to said demurring defendants herein, pending and under said appeal, in order that the defendant may not be prejudiced by any proceedings that the plaintiff might take under the judgment he has recovered, and that said stay be granted without security. And deponent also prays for an order granting the defendant twenty days from and after the entry and service of an order of the Appellate Division, upon such appeal, in which to answer the supplemental complaint of the plaintiff in the event that the appeal be affirmed or dismissed.

No previous application has been made to any court or judge for the order asked for herein.

(*FRANK PRYOR.*)

Sworn to before me this

(*28th*) day of (*July*, 1907.)

(*JAMES HOOD*,)

Notary Public,

(*Alleghany*) County.

(B) Where a demurrer to a counterclaim is overruled and leave given to reply. Here failure to reply would act as an admission under § 522 of the Code. The practice

Taking Appeal.

is not to obtain a stipulation or extension but if the demurrer is sustained upon appeal, to look to the Appellate Division to give the permission to reply.

1. Receive decision signed with notice of entry, together with a copy of the interlocutory judgment entered therein with notice of entry.

Enter in diary "Last day to appeal."

Thirty days from service of a copy of the judgment with notice of entry. (§ 1351 of the Code.)

2. If any memorandum of opinion by judge, secure copy of same.
3. Draw notice of appeal, see Form No. 288, p. 566.
4. File notice of appeal with county clerk. (§ 1300 of the Code.)
5. Serve notice of appeal. (§ 1300, Code.)
6. Enter in diary:

Last day to serve three copies of printed papers on adversary and to file with clerk of the Appellate Division the original printed papers with proof of service by affidavit of such three copies.

Twenty days after appeal is taken. (Rule 41, G. P. R.)

7. Prepare papers on appeal for printer as follows:

1. Title for cover.
2. Index.
3. Statement under Rule 41.
4. Notice of appeal.
5. Summons.
6. Complaint.
7. Answer (if one).
8. Demurrer.
9. Decision.
10. Interlocutory judgment.
11. Opinion or affidavit of no opinion. (Rule 41, G. P. R.)
12. Stipulation waiving certification.

Waiving Certification.

(Form.)

Stipulation Waiving Certification.

It is hereby consented and stipulated by and between the attorneys for the respective parties herein that the foregoing printed papers constitute the record on appeal herein and are true and correct copies of the notice of appeal herein, of the judgment roll entered in the office of the clerk of the county of (*New York*), on the (*3d*) day of (*December*, 1906) upon the interlocutory judgment (*overruling*) the demurrer of the (*defendants*) to the (*amended complaint*) herein, and of all the papers and proceedings upon which the court below acted in making the judgment appealed from, and now on file in the office of the Clerk of the County of (*New York*) and certification thereof pursuant to section 1353 of the Code of Civil Procedure is hereby waived.

Dated, (*December 12th*, 1906.)

(*JAMES HOLT*,)

Attorney for respondent.

(*FRANK WILSON*,)

Attorney for appellants.

8. Send papers on appeal to printer.
9. Receive proof of appeal book.
10. Submit same to opposing counsel for examination and correction with request that he waive certification.
11. Receive proof with corrections and stipulation to waive certification.
12. If attorney refuse to waive certification, strike out stipulation in proof and insert in place thereof form of county clerk's certificate with instruction to leave proper blanks for original signatures in original and unknown dates.

(Form.)

Certificate of Clerk.

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

I, (*Peter J. Dooling*), Clerk of the Supreme Court in and for said county and Clerk of the Supreme Court of said State, do hereby certify that the foregoing consists of certified copies of the notice of appeal and the judgment roll on file in my office.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this day of, A. D., 190 . . .

(*PETER J. DOOLING*,)

Clerk.

 Printing-Papers — Filing.

(Form.)

Affidavit of No Opinion.

NEW YORK SUPREME COURT,
(*New York*) County.

(ALBERT JAMES,) }
Plaintiff.

vs.

(WILLIAM SMITH,) }
Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*Frank Wilson*,) being duly sworn, says that he is the attorney for the (*plaintiff*) in the above entitled action; that no opinion was given herein by Mr. Justice (*Seabury*), the trial justice.

(FRANK WILSON.)

Sworn to before me this (3d)

day of (*December*, 1907.)

(HENRY BUNDER,)

Notary Public,

(N. Y.) Co. (296).

13. Have stipulation waiving certification signed by deponent's attorney in three copies.
14. If respondent's attorney has declined to sign stipulation waiving certification, have same certified by county clerk. (One cent a folio, 3301 Code, Par. 6.)
15. Within 20 days after appeal is taken, serve three copies of printed papers on attorney for respondent and make affidavit of such service. (Rule 41, G. P. R.) See Rule 6, First Department. In Second Department, see also, Enumerated Calendar Rule.
16. Within twenty days after appeal is taken, file original papers on appeal with proof by affidavit of service of three copies on adversary with clerk of Appellate Division.
17. Follow 63-64 of Appeals from Judgments I, p. 59, *supra*, from here on for practice as to placing appeal on the calendar.

HINTS ON APPEAL PROCEDURE.

IV.

From Orders.

Supreme Court, Special Term, to Appellate Division.

1. Receive copy of order with notice of entry.

If all the papers used before the court are not recited in the order or if papers not used or immaterial are recited move for a resettlement of the order.

2. Consult §§ 1346-7-8, Code, as to whether appeal lies.
3. Enter in diary last day to appeal.

Thirty days after service of copy of order with notice of entry. (§ 1351, Code.)

4. Draw notice of appeal. (See Forms Nos. 284, 285, pp. 562-3, and §§ 1300-1, Code.)
5. Serve notice of appeal; obtain admission of service.
6. File notice of appeal with county clerk. (§ 1300, Code.)
7. Enter in diary last day to serve and file printed papers on appeal.

Fifteen days after service of notice of appeal. (Rule 41, G. P. R.)

8. Make up papers on appeal.

These should consist of the notice of appeal, and all other papers used before the court on the hearing, and recited in the order appealed from (§ 1353, Code); together with a copy of the opinion of the court below, or an affidavit that no opinion was given, or that a copy could not be secured. (Rules 41 and 43, G. R. P.) Each of the papers printed should have printed at the top a statement showing what it is, *e. g.*, "order appealed from," and each affidavit should have printed at the top a statement showing in behalf of which party it was read. Papers read in support of the motion are usually printed first. Although no statement under Rule 41 is required it is frequently inserted. In the First Department titles and verifications must be printed and set forth in full, but not so in Second Department. (32 *Misc.* 165.)

Printing Papers.

The papers may be printed in the following order.
As to order, see 105 *App. Div.* 476.

Index.

Notice of appeal.

Order appealed from.

Notice of motion or order to show cause.

Affidavits, pleadings or other papers used before
the court below.

(Where voluminous documents have been used
which are material only as to the fact of their ex-
istence or as to a small part of their contents,
the parties may, by stipulation, or the judge may,
upon notice, settle a statement respecting the
same or the parts thereof to be returned upon
the appeal from the order, to be used in place
of the original documents.) (Rule 34, G. R. P.)

Opinion or affidavit of no opinion.

Certificate of clerk, or

Stipulation that papers are true copies of the paper
used in the court below, and waiving certifica-
tion.

(Form.)

Stipulation Waiving Certification.

Pursuant to section 3301 of the Code of Civil Procedure, it is hereby stipulated that the papers as hereinbefore printed, consist of true and correct copies of the notice of appeal, the order appealed from and all the papers upon which the court below acted in making the order appealed from, and the whole thereof, now on file in the office of the clerk of the county of (*New York.*)

Certification thereof, in pursuance of section 1353 of the Code of Civil Procedure, is hereby waived.

Dated (*February 8, 1906.*)

(MORTIMER MORTON,)

Attorney for Defendant-Appellant.

(CHARLES FROTHINGHAM,)

Attorney for Plaintiff-Respondent.

Filing Printed Papers.

9. Send papers on appeal to printer and receive proof.
10. Submit proof to attorney for respondent for corrections.
11. Receive proof with adversary's corrections.
12. Have papers on appeal printed. (Rule 43, G. R. P.)
13. Submit three copies of printed papers, with blanks for signatures, to attorney for respondent, and have stipulation waiving certification signed.
14. If respondent's attorney refuses to so stipulate have papers certified by the clerk and apply on affidavit to court *ex parte* for extension of time to file case.
15. Before time expires:
 - (1) Serve three copies of printed papers on attorney for respondent.
 - (2) File one copy of original printed papers on appeal, with proof of service of three copies on respondent's attorney, with clerk of the Appellate Division.

Fifteen days after service of notice of appeal.
(Rule 41, G. P. R.) In the First Department, proof of service of three copies on respondent's attorney must be by affidavit. (Rule 6, 1st Dept.) Written admission of service is, however, accepted.

16. Enter in diary the following dates:

- (1) Next motion day on which appeal can be heard:
 - First Dept. — On the first and third Fridays.
(Rule 2, 1st Dept.)
 - Second Dept. — On the first and third Mondays.
(Rule 1, 2d Dept.)
 - Third Dept. — On the first day of the term or on any succeeding Friday. (Rule 1, 3d Dept.)
 - Fourth Dept. — On the first day of the term.
(Rule 3, 4th Dept.)
- (2) Last day to serve notice of argument.

Eight days before day for which cause is noticed. (Rule 39, G. P. R.)

Putting On Calendar—Points.

- (3) Last day to file note of issue.

Eight days before day for which cause is noticed. (Rule 39, G. P. R.; Rule 7, 2d Dept.; Rule 1, 3d Dept.; in the 4th Dept. special attention is called to Rule 1.)

Note.—If the appeal is in the First Department, also enter.

- (4) Last day to file notice of argument and 16 copies of printed papers.

Eight days before day for which cause is noticed. (Rule 4, 1st Dept.)

17. Prepare notice of argument.

18. Serve notice of argument and obtain admission of service.

At least eight days before the commencement of the term for which case is noticed. (Rule 39, G. R. P.)

19. Draw note of issue stating date upon which notice of appeal was served. If the appeal is in the Second, Third or Fourth Departments, it must also state that the cause is to be placed upon the non-enumerated calendar. (Rule 7, 2d Dept.; Rule 1, 3d Dept.; Rule 1, 4th Dept.)

20. Before time expires file note of issue; and in the First Department file also 16 copies of printed papers, and notice of argument with proof of service.

Eight days before commencement of the term for which case is noticed. (Rule 39, G. P. R.; Rule 4, 1st Dept.; Rule 7, 2d Dept.; Rule 1, 3d Dept.; Rule 1, 4th Dept.)

21. Prepare and print points.

As to form, citations, quotation of statutes, and endorsement of name of counsel who is to make argument, see Rule X, 2d Dept.; Rules 9 and 10, 3d Dept.; Rules 10 and 11, 4th Dept.

22. If cause is not to be argued on day noticed for, obtain written stipulation setting cause down for subsequent motion day, and file same on the day prior to that for which cause was noticed. (In the First Department this stipulation must be filed before 3 p. m. Rule IV, 1st Dept. In the

Argument.

Second Department, before 1 p. m. Rule V, 2d Dept.)
(See Rule 6, 3d Dept., and Rule 12, 4th Dept., as to exchange of cases.)

23. Attend for argument.

Before argument:

Deliver copies of printed paper to clerk.

Note.— In 1st Dept. these papers are already on file; in 2d Dept., 16 copies; in 3d and 4th Depts., 13 copies.

Deliver copies of points to clerk:

In 1st and 2d Depts., 16 copies; in 3d and 4th Depts., 13 copies.

Deliver three copies of points to respondent's counsel.

24. Argument:

In the First Department not more than 15 minutes will be allowed to each side. (Rule III, 1st Dept.) In the other departments not more than 30 minutes will be allowed. In the First Department appeals from orders which have been placed on the calendar may, with the approval of the court, be submitted on any day by delivering to and leaving with the clerk the requisite number of copies of the points. (Rule 3, 1st Dept.)

HINTS ON APPEAL PROCEDURE.

V.

From Final Order or Decree of Surrogate's Court, New York County,* to Appellate Division, First Department.

As proposed findings of fact and conclusions of law must be submitted to the court before the argument at the close of the testimony, i. e., final submission of cause (1023 Code, 113 App. Div. 254), time must be obtained from the court to submit same after opinion is given if attorney desires to follow the prevailing practice and preserve his technical right.

1. If any memorandum or opinion given by Surrogate, secure copy of same.
2. Consult §§ 2516, 2550, 2570, Code. Order is appealable if it affects a substantial right. (See also Rule 38, G. R. P.)
3. Order stenographer's minutes.
4. Get exhibits.
5. *If thus obtained, as above indicated, prepare your proposed decision, findings of fact and conclusions of law for submission on settlement of decision. (§§ 2576, 2546, Code.)*

It is provided by section 2546 of the Code, as follows:

“In a special proceeding, other than one instituted for the probate or revocation of probate of a will, the surrogate may, in his discretion, appoint a referee to take and report to the surrogate the evidence upon the facts, or upon a specific question of fact; to examine an account rendered; to hear and determine all questions, arising upon the settlement of such an account, which the surrogate has power to determine; and to make a report thereon; subject, however, to confirmation or modification by the surrogate. Such a referee has the same power, and is entitled to the same compensation as a referee appointed by the Supreme Court, for the trial of an issue of fact in an action; and the provisions of this act, applicable to a referee by the Supreme Court, apply to a reference, made

* As the referee makes the findings of fact and conclusions of law in cases where there has been a reference to hear and determine on an accounting, the practice on appeal differs somewhat from the practice here outlined. See note under 5, *supra*.

Preparing Decree.

as prescribed in this section, so far as they can be applied in substance without regard to the form of proceeding. The surrogate of the county of New York may, on the written consent of all the parties appearing in a probate case, appoint a referee, or may, in his discretion, direct an assistant to take and report the testimony, but without authority to pass upon the issues involved therein. Unless a referee's report is passed upon and confirmed, approved, modified or rejected by a surrogate within ninety days after it has been submitted to him, it shall be deemed to have been confirmed as of course and a decree to that effect may be entered by any party interested in the proceeding upon two days' notice."

Thus the surrogate may appoint a referee to hear and determine all questions arising upon the settlement of an account, and in this class of references, the referee, and not the surrogate, makes the findings. In any special proceeding, other than one instituted for probate or revocation of probate of a will, the surrogate may in his discretion appoint a referee to take and report to the surrogate the evidence upon the facts or upon a specific question of fact. In this class of references the referee is not clothed with power to hear and determine and the surrogate makes the findings of fact.

The practice is clearly set forth in *Matter of Yetter*, 44 App. Div. 406, as follows:

"An exception may be taken to a ruling by a Surrogate, upon the trial by him of an issue of fact, including a finding, or a refusal to find, upon a question of fact, in a case where such an exception may be taken to a ruling of the court upon a trial without a jury of an issue of fact as prescribed in article third of title first of chapter tenth of this act. * * * Upon such a trial the surrogate must file in his office his decision in writing, which must state separately the facts found and the conclusions of law. Either party may, upon the settlement of a case, request a finding upon any question of fact, or a ruling upon any question of law; and an exception may be taken to such a finding or ruling, or to a refusal to find or rule accordingly. An appeal from a decree or an order of a surrogate's court brings up for review by each court to which

Preparing Decree.

the appeal is carried each decision to which an exception is duly taken by the appellant as prescribed in this section."

Section 2546 of the Code gives the surrogate authority, in a special proceeding other than one instituted for probate or revocation of probate of a will, to appoint a referee "to take and report to the surrogate the evidence upon the facts, or upon a specific question of fact; to examine an account rendered; to hear and determine all questions arising upon the settlement of an account, which the surrogate has power to determine; and to make a report thereon; subject, however, to confirmation or modification by the surrogate." The section further provides that "the provisions of this act, applicable to a reference by the Supreme Court, apply to a reference made as prescribed in this section, so far as they can be applied in substance without regard to the form of proceeding."

The meaning of these provisions seems clear. When the surrogate himself takes the testimony and tries the issues of fact, he must make a decision containing specific findings, and the appellant must file the required exceptions if he desires an effective review. This also applies to a case where a reference is ordered merely to take and report the evidence. *The surrogate himself then tries the issue, using the reported evidence as an aid.* Where, however, a reference is ordered to hear and determine, there is no trial of the issues by the surrogate within the meaning of section 2545. He may still, it is true, as the section provides, deny confirmation or modify the report. But his action in that regard is in its nature appellate or supervisory, not original. In such cases section 2546 clearly governs. The intention was to conform the practice upon accountings to the ordinary practice in such matters in the Supreme Court. It certainly was not intended upon such accountings to have two primary trials — one by the referee and another by the surrogate, with two sets of findings and two sets of exceptions. Such a view would deprive section 2546 of all force, would impose upon the surrogate much of the very labor which the reference was provided to save him, and would inflict upon the parties an unnecessary and useless multiplication of

Settlement Of Decision.

routine work. We say useless because in such a case a second set of exceptions would be quite needless to point out to the appellate court the specific error complained of. When the referee in such a case makes separate findings, numbering them properly, and exceptions are duly filed to one or more of such findings, the surrogate, upon the hearing, sustains or overrules each of the numbered exceptions to the numbered findings, and his decree thereupon shows upon its face precisely what is the subject of further review. No difficulty that we are aware of has ever been experienced on this head in the Supreme Court, and we can see no reason why that practice may not here, as the section directs, be "applied in substance."

6. Submit proposed decision to surrogate upon settlement.

The Surrogate may make findings or conclusions as requested by both parties; and direct that an engrossed copy of the decision and findings be presented for signature. In this case it is the duty of the prevailing party to prepare and submit the proposed findings of fact and conclusions of law. The defeated party should be careful to see that such of his proposed findings or conclusions as are found by the judge are included in this engrossed copy of the decision.

7. Apply for additional time to make and serve case upon settlement of decision and decree.
8. Enter order granting additional time.
9. Serve order and notice of entry.
10. When decision and decree signed, and a copy thereof with notice of filing and entry served,

Enter in diary:

- (1) Last day to serve and file exceptions to decisions.

Ten days from the service of copy of decree and notice of entry. (§§ 2545, 994, Code.)

- (2) Last day to appeal.

Thirty days from the service of copy of decree and notice of entry. (§ 2572, Code.)

Taking Appeal — Undertaking.

It should be borne in mind that by § 2586 of the Code, it is provided that where an appeal is taken upon the facts the Appellate Court has the same power to decide the questions of fact which the surrogate had, and it may, in its discretion, receive further testimony or documentary evidence and appoint a referee. (§§ 2585, 2587, 2588 and 2589 of the Code.)

11. Prepare exceptions to decision (See Forms Nos. 279, 280, pp. 556-7).
12. Before time expires serve exceptions (10 days from service of copy of decree and notice of entry).
13. Prepare notice of appeal.

See §§ 2571, 2569, 2574, Code, 135 *N. Y.* 413; 92 *App. Div.* 462,) and Form No. 286, p. 564.

14. Have amount of undertaking fixed, if necessary. (§ 2580 Code.)
15. Prepare undertaking. (See Form No. 290, p. 568, § 2581; 810 to 813, 1305, 1306, Code. Rule 5, G. P. R.)

Note. — Undertaking for a sum not exceeding \$250 is required to perfect the appeal; except where it is specially prescribed by statute that security to perfect an appeal is not necessary (§ 2577, Code); and when so perfected the appeal stays execution, except as below referred to (§§ 2581, 2584, Code); in the cases prescribed in §§ 2578 and 2579, Code, to perfect the appeal and to stay the execution additional security must be given; the amount to be determined as prescribed in § 2580, Code; as to what decrees the execution of which is not stayed by appeal, see § 2580, Code. (As to what court has jurisdiction after an appeal has been perfected, see *Matter of Murphy*, 79 *App. Div.* 541.)

16. Have undertaking approved as to form and sufficiency by the surrogate. (§ 2581, Code.)
17. Prepare notice of appeal. (§ 2571, Code.)
18. File undertaking and notice of appeal in the office of the clerk of the Surrogate's Court before time to do so expires. (§ 2574 and § 2581, Code.)

Thirty days after service of decree and notice of entry.

Justification.

19. Serve notice of appeal and copy of undertaking with notice of filing on respondent's attorney before time to do so expires. (§§ 1307, 2574, Code.)

Thirty days after service of decree and notice of entry.

20. Enter in diary last day for respondent to except to sureties.

Ten days after filing of undertaking. (Rule 16 Surro. Ct. N. Y. Co.)

21. Receive notice of exception to sureties.

22. Enter in diary last day for sureties to justify.

Ten days after notice of exception is received.

23. Prepare notice of justification.

Five days' notice must be given. (Justification is had before a surrogate or the chief clerk.)

24. Serve notice of justification.

25. Enter in diary date of justification.

26. Attend upon justification.

27. If sureties found sufficient, have approval endorsed on undertaking, or copy. (§ 2581, Code.)

28. Serve notice of approval of sureties upon attorney for respondent. (§ 1355, Code.)

29. See whether respondent has filed a transcript of the decree in county clerk's office and docketed same. (§ 2553, Code.)

30. If extension of time to make and serve case needed, or if extension by stipulation has been had and further time is needed, ask adversary to stipulate for same *three* days before time to serve case expires.

This is very important, as the court rules provide that "no order extending the time to serve a case, or the time within which the amendments thereto may be served, shall be made, unless the party applying for such order serve a notice of two days upon the adverse parties of his intention to apply therefor, stating the time and place of making such application. (See Rules 32 and 33, G. R. P.)

31. If extension by stipulation refused, apply to surrogate for same on two days' notice. (Rule 32, G. R. P., §§ 781, 783, Code. See 25 *How. Pr.* 438.)

 Preparing Proposed Case.

32. Obtain order extending time and serve same with notice of entry.
33. Get opinion or memorandum of surrogate, if one filed, or make affidavit that none was given, or if given that copy cannot be procured. (Rule 41, G. R. P.)
34. Receive stenographer's minutes of trial.
35. Determine at this point whether the appeal is to be treated as an enumerated or a non-enumerated motion and whether a case is necessary. (See Rule 38, G. R. P., § 2576, Code, and *Jessup's Surrog. Prac.*, page 234 et seq.)
36. When necessary prepare proposed case before time to do so expires.

§§ 1353, 997 and 2576, Code; Rules 31, 32, 33, 34, 35, 41, G. R. P. As to whether a case is necessary, *e.g.*, where the appellant is satisfied with the rulings made on the trial and with the findings of fact and desires only to review the conclusions of law based thereon, see § 998, Code, 103 *N. Y.* 658; 11 *App. Div.* 316.

The Appellate Division assumes in such a case that there was no evidence from which any other facts could have been found. (135 *N. Y.* 209.)

The case must contain:

So much of the evidence and other proceedings upon the trial as is necessary to present the questions of law upon which exceptions were taken at the trial and also the exceptions taken by the party making the case;

So much of the evidence as is material to the questions to be raised; and if the question of weight of evidence is to be reviewed, a statement that the case contains *all the evidence* taken on the trial.

The parties may agree on the facts proven to be inserted in the case, instead of the testimony on the approval of the surrogate. (Rule 32, G. R. P.)

If a motion to postpone the trial was made and denied the affidavits used in support thereof form a proper part of the case to present the action taken below for review. The case should contain only the papers that were before the judge when the motion was decided.

No more evidence should be inserted in the case than is material to the questions to be raised and the surrogate should strike out all evidence and other matter not prop-

erly inserted. The reasons of the surrogate have no place in the case.

Exceptions taken by the respondent should not be included except in peculiar cases. But see § 1187, Code.

But to review the question whether a finding was supported by evidence or that a finding of fact is against the evidence, it must appear that all the evidence bearing upon that point or bearing upon the findings sought to be reviewed appears in the case. Otherwise the Appellate Court will assume that the evidence was sufficient to sustain the findings of fact.

And where documentary evidence received upon the trial is omitted from the case, findings of fact will not be reviewed as such evidence may have had an important bearing upon the determination.

The case should not contain questions withdrawn or answers excluded without objection.

Exhibits should not be included at length unless the surrogate so directs.

When a document is excluded which has been offered in evidence, the entire writing rejected or a sufficient statement of its contents, should be included.

If only questions of law are to be raised, all the evidence should not be inserted but only so much as is material to the questions to be reviewed.

The theory of the proposed case is that the appellant will insert all the evidence bearing upon the questions to be raised and the respondent add all he deems necessary to a solution of such questions.

An exception gives notice to the respondent of an intention to raise the questions and put the burden on the respondent of adding any needed proof.

If the proposed case does not contain a statement that it contains *all the evidence*, the respondent may assume that only questions of law are to be raised; but if the case contains such a statement the respondent must see that nothing essential is omitted. The lines of each page of the proposed case should be numbered. (Rule 32, G. R. P.)

The following method is suggested for preparing a proposed case:

(Form.)

Proposed Case.

SURROGATE'S COURT,
County of (*New York*.)

<p>IN THE MATTER of the (<i>Estate of JOHN SMITH</i>.) Deceased.</p>
--

Sir:

PLEASE TAKE NOTICE that the following is the proposed case on appeal of (*William Ford, the executor*) and appellant herein.

Dated, (*New York, December 10, 1906.*)

Yours, etc.,

(*FRANK DOWD*.)

Attorney for (*Appellant.*)

To Messrs:

(*BUDD & BUDD*),

Attorneys for (*Petitioners.*)

(*AROON BOCKMAN and JAMES WILSON.*)

This notice is usually on a separate sheet from the case proper.

(Here insert statement under Rule 41 and then add):

Notice of Appeal:

Citation.

Petition.

Affidavits.

Exhibits.

Order to show cause why executor should not be removed.

Answer of *William Ford*.

Order of reference to *John Kent*.

Affidavits and order to show cause dated *November 22, 1906*, for leave to amend petition.

Form Of Proposed Case.

Order granting leave to amend petition and referring to *John Kent*. Dated, *December 10, 1906*, and copy of amended petition.

Answer of *William Ford* to amended petition.

(Any other petitions, orders, etc. — identifying them.)

Respondents' request to find.

Findings of fact and conclusions of law.

Exceptions of *William Ford*.

Exceptions of *James Wilson*.

Report of referee.

Referee's opinion.

Surrogate's opinion.

Decree *revoking letters testamentary*.

Case.

SURROGATE COURT,
(*New York*) County.

IN THE MATTER
of the
(*Estate of JOHN SMITH*,) Deceased.

Before John Kent,
Esq., Referee.

The executors above named having filed their account in the office of the Clerk of the Surrogate of the County of (*New York*) on the (*15th*) day of (*October, 1906*) and objections thereto having been filed by various creditors and an order having been made thereupon by (*Abner C. Thomas*) Surrogate on the (*25th*) day of (*October, 1906*), referring the issues herein to (*John Kent*) Esq. to hear and determine; and this matter having, pursuant to such order, been duly brought on for hearing before said (*John Kent*) Esq., as referee, on the (*5th*) day of (*November, 1906*), the following proceedings were had:

The referee states that he has taken the statutory oath.

Form Of Proposed Case.

Appearances:

Frank David, Esq., for William Ford.

Messrs. Budd & Budd, for Petitioner.

Aroon Bockman, for James Wilson.

(Insert stipulations from record.)

Then the minutes of the trial reduced to narrative form as shown below. (See Rule 34, G. R. P.)

E. g. The stenographer's minutes read:

"Rufus Lewis, called as a witness on behalf of petitioners, being duly sworn, testified as follows:

By Petitioner's Counsel:

Q. What is your age? A. 35.

Q. Where do you reside? A. Brooklyn, New York, 540 8th ave.

Q. Are you married? A. I am.

Q. Are you connected with the firm of Higgins, Boone & Co.? A. I am.

Q. How? A. I am a member of that firm and general manager of its business.

Q. Are you paid a salary or not? A. I receive no stipend from the concern other than my interest in the profits."

The above turned into narrative form would read:

1 "I am 35 years old, and reside at 540 Eighth ave.,
2 Brooklyn, N. Y. I am married. I am connected with
3 the firm of Higgins, Boone & Co., as a partner in and
4 general manager for that concern. I receive no salary
5 and no stipend other than my interest in the profits."

At the close of the proposed case the following statement should appear:

"The foregoing contains all the testimony taken and proceedings had upon the trial of this proceeding."

But when a question of the admissibility of evidence or the form of the question objected to is involved it is wise to insert the same and a question or two preceding *in hæc verba*.

Although it is a general rule that the appeal must be heard upon the pleadings and proofs, if you represent the appellant you must be aware that the rule is subject

Proposed Amendments.

to certain exceptions and that your opponent may in a proper case introduce record or documentary evidence upon the hearing of the appeal in support of the decree appealed from. Thus, where record evidence has been improperly proved, upon the trial, or where a fact has been assumed on the trial which might have been established by record evidence and such evidence was inadvertently omitted, or where it is evident that the record itself cannot be contradicted or varied, so that a new trial would not alter the case, the record may be read upon the hearing of the appeal to supply the deficiency and sustain the judgment.

But such evidence is never received by an appellate court for the purpose of reversing a judgment.

As to practice of making and serving case, see *Baylies on New Trials and Appeals*; *Jessup, Surrog. Prac.*, p. 142 et seq.; 57 Barb. 209.

37. Serve proposed case on attorney for respondent before time to do so expires.

Thirty days after service of decree with notice of entry.
(Rule 32, G. R. P.)

38. Enter in diary last day to receive amendments.

Ten days after service of proposed case. (Rule 32, G. R. P.)

39. Receive proposed amendments.

Bear in mind, that if respondent applies to you on last day to serve proposed amendments for an extension of time therefor that it is too late for him to obtain such extension from the court if you deny same, as two days' notice is required. (Rules 32 and 33, G. R. P.)

The following is the usual form of such amendments:

Form Of Proposed Amendments.

(Form.)

Proposed Amendments.

SURROGATES' COURT,
(*New York*) County.

<p>IN THE MATTER of the (<i>Estate of JOHN SMITH,</i>) Deceased.</p>	}
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Sir :

PLEASE TAKE NOTICE that the (*petitioner*) herein proposes the following amendments to the proposed case containing exceptions heretofore served by the (*executor*) and appellant herein, viz. :

First Amendment. — At page 7, line 22, strike out the words “ to which ruling defendant duly excepted.”

Second Amendment. — At page 8, line 9, strike out word “ stocks ” and insert the word “ bonds.”

Third Amendment. — At page 11, line 4, after the words “ without notice to me ” add “ except as I heretofore stated.”

Fourth Amendment. — At page 11, line 9, insert after the word “ will ” the word “ not.”

(BUDD & BUDD,)

Attorneys for (*Petitioner.*)

To (*FRANK DOWD,*) Esq.,
Attorney for the (*Executor.*)

Indorsement on Amendments.

SURROGATES' COURT,
(*New York*) County.

<p>IN THE MATTER of the (<i>Estate of JOHN SMITH,</i>) Deceased.</p>	}
--	---

Sir : —

PLEASE TAKE NOTICE that the within is a copy of the proposed amendments by the (*petitioner*) and re-

Notice Of Settlement.

spondent to the case proposed by the (*executor*) and appellant in this proceeding.

Dated, (*New York, Sept. 15, 1906.*)

(*BUDD & BUDD,*)

Attorney for (*Petitioner.*)

To (*FRANK DOWD,*) Esq.,

Attorney for (*Executor.*)

40. Enter in diary last day to serve notice of settlement.

Within four days after service of proposed amendments.
(Rule 32, G. R. P.)

41. If proposed amendments are served mark them "allowed" or "disallowed." (Rule 32, G. R. P.)

42. Draw notice of settlement of case and exceptions before the Surrogate or referee before whom the trial was had and serve within four days from service of proposed amendments. The date of settlement stated therein must not be less than four nor more than ten days after service of notice. (Rule 32, G. R. P.; § 997, Code.)

(Form.)

Notice of Settlement.

SURROGATES' COURT,

(*New York*) County.

IN THE MATTER

of the

(*Estate of JOHN SMITH,*) Deceased.

Sir:

TAKE NOTICE that the proposed case in this proceeding with the proposed amendments will be submitted to Honorable (*Frank T. Fitzgerald,*) Surrogate, before whom the trial herein was had for settlement at his Chambers in the (*Hall of Records,*) in the (*Borough of Manhattan,*

Settlement Of Case.

City of New York,) on the (25th) day of (*September*, 1907,) at 10.30 a. m.

Dated, (*New York, Sept. 21, 1907.*)

Yours, etc.,

(*FRANK DOWD,*)

Attorney for (*Executor.*)

To:

Messrs. (*BUDD & BUDD,*)

Attorneys for (*Petitioner.*)

43. Enter in diary date of settlement.
44. Prepare memorandum for Surrogate on settlement, and note that amendments must contain references to pages of stenographer's minutes. (Rule 32, G. R. P.)
45. Settlement. (Rule 32, 34, G. R. P.; § 997, Code.)
Submit to Surrogate on settlement:
 1. Proposed case.
 2. Proposed amendments.
 3. Stenographer's minutes of trial.
 4. Exhibits or models.
 5. Memorandum as to settlement.

The settlement itself is usually informal. Affidavits may be presented. The Surrogate's recollection assisted by the stenographer's minutes controls. Where there is a dispute, see 34 *Hun*, 547; 112 *N. Y.* 542; 40 *App. Div.* 86.

On re-settlement, see 112 *N. Y.* 592; 119 *N. Y.* 633; 34 *Hun*, 547; 7 *N. Y. Supp.* 321; 7 *N. Y. Supp.* 69; 28 *App. Div.* 504; 35 *App. Div.* 379.

46. See that the Surrogate or referee signs an order settling the case and ordering it on file.

This order is usually endorsed on the original proposed case submitted to the Surrogate or referee.

47. When case settled, obtain original proposed case and amendments submitted, *i. e.*, the proposed case with amendments marked "allowed" and "disallowed" by the attorney

Settlement Of Case.

and the Surrogate with order settling and filing same and exhibits and models.

The law provides that within the ten days after settlement the original case signed by the Surrogate shall be filed with the clerk of the Surrogate Court. During these ten days the attorney has possession of the original papers now in disorder on account of the settlement and he is to cause an engrossed copy to be made and, upon filing the original with the Clerk of the Surrogate Court, have the engrossed copy certified by the Clerk and, when so certified, ordered on file by the Surrogate. If the attorney is unable within ten days to finish with the original case, obtain extension of time to file original case as provided by Rule 35, and to comply with such Rule.

File the original case signed by the Surrogate or referee on the printed appeal record, which contains the case and the stipulation, and order settling and filing same, with the clerk of the court within said ten days or within the time as extended.

This time has proved so inadequate in practice that very frequently attorneys have failed to comply with Rule 35, G. R. P., but much delay in opening defaults and embarrassment may follow a failure to comply strictly with this rule. (Rule 35, G. P. R., 9 *App. Div.* 406; 32 *Misc.* 657.)

48. Enter in diary when case must be filed with Clerk of the Surrogate Court.

Ten days after settlement. (Rule 35, G. R. P.)

It is the prevailing practice not to engross a case as settled but to proceed at once to print the case and to file a copy of the printed case in lieu of the engrossed case by stipulation between the attorneys.

49. Enter in diary last day to serve three copies of printed case on adversary and to file with the Clerk of Appellate Division the original printed case with proof of service by affidavit of such three copies.

Twenty days after settlement. (Rule 41, G. R. P.)

 Printing Case.

50. Prepare papers for printer. In arranging papers in a case on appeal, from a final order or decree, note the following: The name describing each paper should be placed at the top thereof.

An index is necessary. (Rule 43, G. R. P.) It must specify all papers, and give the names of all witnesses, and the designation by the stenographer by number of all exhibits, and the number of the page in the case where they appear.

The nature of each exhibit should be indicated by a concise description, and the folio at which it was admitted in evidence given.

Arrange titles of papers alphabetically and names of witnesses alphabetically or chronologically. The stenographer's designation of the exhibits by letter or number should control the order in which they are to be printed.

While Rule 41 requires merely that the statement thereunder should contain merely the time of the beginning of the action and of the service of the respective pleadings, the names of the original parties in full, and any change in the parties if such has taken place, it is the practice and very wise that this statement should be very full, and should give a concise history of the steps of the proceeding, even though not required by the rule as, for instance, any change that has taken place in the attorneys for any of the parties to the proceeding.

(Form.)

Statement Under Rule 41.

SURROGATES' COURT,

(*New York*) County.

IN THE MATTER of the (<i>Estate of JOHN SMITH,</i>) Deceased.

STATEMENT UNDER RULE 41.

This proceeding was commenced by the filing of a petition asking for the revocation of letters testamentary

Printing Case.

issued to William Smith, as executor of the estate of James Smith, deceased, by Eliza Smith, petitioner, in the office of the Clerk of the Surrogates' Court, New York County, on March 6, 1905. The original parties to this proceeding were the petitioner, Eliza Smith, who appeared by George O. Johns, Esq., her attorney; and the respondent, William Smith, who appeared by Thomas Johnston, Esq., his attorney. The answer of William Smith was served on April 3, 1905. By an order bearing date April 26, 1905, the matter was referred to Theodore Thompson, as referee. Upon May 6, 1905, an order to show cause was issued out of this court returnable on May 10, 1905, for leave to amend the petition herein, and upon the return of said order an order was entered granting leave to amend the petition and referring the same to Theodore Thompson, as referee. The answer of William Smith to the amendatory petition herein was served on May 15, 1905. On December 1, 1905, Theodore Thompson, referee, filed his report, together with his opinion thereon, and on January 5, 1906, a decree was entered herein revoking the letters testamentary to William Smith. By an order entered herein on May 9, 1905, Messrs. Dunston & Wilcox were substituted for George O. Johns, as attorneys for the petitioner. There has been no change of parties or attorneys herein except as above stated. The hearings were held before Theodore Thompson, referee, beginning April 28, 1905, and continued down to the date of the filing of said referee's report.

Notice of Appeal. .

Pleadings, and all papers on file with judgment roll,
i. e.:

Citations.

Petitions.

Answers, etc.

It is impossible to give here in detail the papers which should be included in the printed case in the order in which they should appear, but as a useful general rule

 Stipulation Settling Case.

and guide the following is suggested. As to order, see 105 *App. Div.* 476.

Index.

Statement under Rule 41.

Notice of Appeal.

The various papers that go to make up the judgment roll in chronological order, including any exhibits attached thereto:

Appellant's requests to find.

Findings of fact and conclusions of law.

Exceptions thereto.

Report of referee.

Opinion of referee.

Bill of costs and affidavits opposing taxation (if material to any question raised on appeal).

Decree appealed from.

Case with statement contained therein, that it contains all the evidence.

Exhibits.

Opinion of Surrogate or affidavit of no opinion, or stipulation settling case.

Order settling case and ordering it on file.

Stipulation waiving certification on certificate of clerk.

Order filing printed record in Appellate Division.

(Form.)

Stipulation Settling Case.

IT IS HEREBY STIPULATED that the foregoing case on appeal contains all the evidence taken and proceedings had upon the trial of this proceeding and that the same be settled, signed and ordered to be filed and annexed to the decree, and the papers upon which said decree was entered in this proceeding.

Dated (*New York, September 1, 1907.*)

(BUDD & BUDD,)

Attorneys for petitioners.

(JAMES IRVING,)

Attorney for respondent.

Order Settling Case.

(Form.)

Order Settling Case.

Upon the foregoing stipulation it is hereby ordered, that the foregoing printed case which contains all the evidence given and proceedings had upon the trial of this proceeding be settled and filed herein as the original case on appeal, and annexed to the decree entered in this proceeding and to the papers upon which said decree was entered.

Dated, (*New York, Sept. 15, 1906.*)

(*FRANK T. FITZGERALD,*)

Surrogate.

Where there is no case made and settled, the above stipulation and order do not apply and are not necessary.

In such case the only requirement to be fulfilled is to have a stipulation of waiver of certification or a certificate of the clerk.

As to the use of italics in case, see 12 *N. Y. Supp.* 870.

(Form.)

Stipulation Waiving Certification.

(Where Case Made.)

Pursuant to section 2567 of the Code of Civil Procedure,
IT IS HEREBY STIPULATED that the foregoing consists of true and correct copies of the notice of appeal, the decree, the papers upon which said decree was entered, and the case and exceptions as settled, and all the papers and testimony upon which the surrogate acted in making the decree appealed from,* and the whole thereof, now on file in the office of the Clerk of the Surrogate's Court of the County of (*New York,*) and the certification thereof by the Clerk of said Court is hereby waived.

Dated (*New York, September 1, 1907.*)

(*BOWNE & DOWNE,*)

Attorneys for Petitioner.

(*ROUND & BOUND,*)

Attorneys for (*E. H. Ames,*) Respondent.

* "Decision, proposed findings of fact and conclusions of law, exceptions to findings and decisions, referee's report and opinion" and any other papers printed and upon which the decree was not entered.

 Stipulation Waiving Certification.

(Form.)

Stipulation Waiving Certification.

(Where No Case Made.)

Pursuant to section 2567 of the Code of Civil Procedure, it is hereby stipulated that the foregoing consists of true and correct copies of the notice of appeal, the order appealed from and all the papers and proceedings upon which the Surrogate acted in making said order, and the whole thereof, now on file in the office of the Clerk of the Surrogate's Court of the County of (*New York*) and certification thereof by the Clerk of said Court is hereby waived.

Dated (*New York, September 1, 1907.*)

(*BOWNE & DOWNE,*)

Attorneys for Petitioner.

(*ROUND & BOUND,*)

Attorneys for (*E. H. Ames,*) respondent.

Order Filing Record in Appellate Division.

Pursuant to section 1353 of the Code of Civil Procedure, and to the stipulation of the parties, it is hereby

ORDERED that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court in the (*First*) Judicial Department.

Dated (*New York, September 1, 1906.*)

(*FRANK T. FITZGERALD,*)

Surrogate.

51. Send papers to printer.

Keep in mind the last day to serve and file the printed appeal book.

52. Receive proof of appeal book.

53. Submit same to opposing counsel for correction.

54. Receive proof with objections.

55. Agree upon changes.

56. When changes agreed upon, have case printed.

Thirty copies are usually ordered (unless intention is to appeal to Court of Appeals, when 60 copies are ordered

Filing Printed Record.

unless there are three or more attorneys to be served when 70 or more copies may be needed).

Blanks are usually left in three copies for signatures to stipulations and orders in case, and the names printed in the remaining copies.

57. Receive printed case on appeal from printer.
58. Within ten days after settlement, or before expiration of time as extended, have stipulations settling case, waiving certification and consenting to filing of printed copy with clerk of the Surrogate's Court in three copies signed by attorney for respondent.
59. If respondent declines to sign such stipulations, comply at once with Rule 35 by filing the original (typewritten) case and amendments as they came from the surrogate, and an engrossed copy of the case as settled with the clerk of the Surrogate's Court, and have printed case certified by the clerk, or obtain order extending time to file case from the court. (Rules 35 and 41, G. P. R.; § 1353, Code; 26 *How.* 375.)

It is very unusual for attorneys to require certification of the case, and where such a refusal to assent to the usual stipulations is met after the case is printed, certain changes in the printed case become necessary. The clerk's certificate must be added, and the orders settling the case and ordering it on file must be changed as follows: Instead of "on the annexed stipulation, etc.," must be inserted "upon the annexed certificate of the clerk of this court that the foregoing is a true copy of the case and exceptions, the judgment roll and all other papers on file herein, etc."

60. Have the orders settling case and ordering it on file in the three copies with blanks signed by the Surrogate.
61. File one signed copy of the printed case with the clerk of the Surrogate's Court.
62. Within 20 days after settlement serve three copies of printed case on attorney for respondent, and make affidavit of such service. (Rule 41, G. P. R., and see Rule 6, 1st Dept. Rules; in 2d Dept., see also Enum. Cal. Rule, 2d Dept. Rules.)

63 and 64 of Appeals from Judgments I, page 59, may now be followed.

HINTS ON APPEAL PROCEDURE.

VI.

From Judgments.

City Court of the City of New York to Supreme Court, Appellate Term.

From judgment entered on verdict of a jury and order denying motion for a new trial.

1. As soon as the verdict has been rendered and carefully scrutinized, the next duty of the defeated counsel is to move to set aside the verdict and for a new trial, and he must make up his mind whether he will make the motion then and there or wait until some future time to make it. He has, under § 999 of the Code, the rest of the term in which to move. If it is merely made as a formal motion for securing the right to have facts reviewed at the Appellate Term, it is best to make it then and there, but if the attorney feels that there is any hope of having a new trial on the ground that the verdict is excessive or insufficient in damages or otherwise contrary to the evidence, it is better to obtain leave to submit briefs and make motion at later day in same term.
2. When verdict rendered, move to set aside verdict and for new trial upon all the grounds stated in § 999 of the Code, and upon any special grounds that exist.

Must be made at same time; and before the same judge.

(§ 999, Code; see Rule 31, G. R. P.)

The court usually denies this motion, in which event —

3. Move for stay of execution and additional time to make a case.

The court usually grants this motion, and gives 20 to 30 days stay of execution and from 30 to 60 days in which to make a case. (§ 1351, Code.)

4. Order copy of stenographer's minutes of trial.
5. Get exhibits.
6. Get extract from clerk's minutes. (§ 1237, Code.)

If decision is reserved on motion for new trial, the exhibits and extract from minutes cannot be obtained until the trial judge decides the motion.

Taking Appeal.

7. Enter in diary when stay expires.

The stay begins to run from date of entry of judgment.

8. Receive copy of judgment with notice of entry.

9. Enter in diary last day of appeal.

Ten days after service of a copy of the judgment, with notice of entry. (§ 3190, Code.)

10. Enter in diary last day to serve proposed case and also last day to serve notice of application for extension to serve case, which is *two* days before last day to serve case.

Last day to serve proposed case is *30 days after service of copy of judgment with notice of entry unless further time granted by court.* (Rule III, Appellate Term Rules, and Rule 32, G. P. R.)

11. Receive order denying motion for new trial with notice of entry.

12. Enter in diary when time to appeal therefrom expires.

Ten days from service of a copy with notice of entry.
(§ 3190, Code.)

The usual practice is to serve a copy of the order denying motion for new trial with the copy of the judgment.
This is not always done, however.

13. If copy of order denying motion for new trial is not served by adversary, draw and enter same if you wish to review the questions of fact in the case. (See Form No. 265, p. 536, *supra*.)

14. Serve copy with notice of entry on adversary.

15. Draw notice of appeal. (See Form No. 289, p. 567, §§ 1300–1301, and 1355, Code.)

Notice of appeal cannot be amended after time to appeal has expired where the effect of the amendment will be to extend the time to appeal.

16. File notice of appeal with clerk of City Court. (§ 1300, Code.)

The undertaking and notice of appeal are usually filed together.

Staying Execution.

17. Draw undertaking on appeal.

An undertaking is not necessary to perfect the appeal, but except where it is especially provided by law it is necessary to stay execution. (See Form No. 290, p. 568, §§ 810, 811, 812, 813, 819, Code; Rule 5, G. P. R.)

Security may be waived. (§ 1305, Code.)

Deposit in lieu of undertaking. (§ 1306, Code.)

As to dispensing with, see § 1312, Code; see also §§ 1326, 1327, 1334, 1335, 1351, and 1352, Code.

In action to recover chattel, draw affidavit and order fixing amount of bond.

Need not be approved. (§ 1335.) See note under 17, Appeals from Judgments, I, page 40, *supra*.

18. Before stay expires and before time to appeal expires, file undertaking with clerk of city court. (§§ 3192, 1307-1334, Code; Rule 4, G. P. R.)

The undertaking and notice of appeal are usually filed together.

19. Serve notice of appeal and copy of undertaking with notice of filing. (§§ 1300, 1302, 1326, 1334, 796 and 797, Code.)

20. Enter in diary last day for respondent to serve notice of exception to sureties.

Ten days after service of undertaking with notice of filing notice of exception must be served. (§ 1335, Code.)

21. Wait for notice of exception to sufficiency of sureties.

22. Receive notice of exception to sufficiency of sureties.

23. Enter in diary last day for sureties to justify.

Within 10 days after service of notice of exception. (§ 1335, Code.)

24. Enter in diary last day to serve notice of justification.

At least 5 days' notice of justification must be given. (§ 1335, Code.)

25. Draw and serve notice of justification of sureties. (See Form No. 292, p. 571.)

Five days' notice must be given, and date of justification must be within 10 days after service of notice of exception.

Justification.

26. Enter in diary to notify sureties to justify and date of justification.
27. Notify sureties when and where to justify.
28. Attend on justification.
29. Have sureties justify, and undertaking approved and endorsed by judge:

"I hereby find the sureties on the within undertaking sufficient and hereby allow them and each of them."

(Date)

(Signature)

30. Serve notice of approval of sureties. (§ 1335, Code.) See Form No. 293, p. 572.
31. If extension of time to make and serve case needed or if extension by stipulation has been had and further time is needed, ask adversary to stipulate for same *three* days before time to serve case expires.
This is very important as the court rules provide that "no order extending the time to serve a case or the time within which the amendments thereto may be served, shall be made, unless the party applying for such order serve a notice of *two* days upon the adverse parties of his intention to apply therefor, stating the time and place of making such application." (See Rules 32 and 33, G. P. R.)
32. If extension by stipulation refused, apply to court at Special Term for same on *two* days' notice. (Rule 32, G. P. R.; §§ 781, 783, Code. See 25 *How. Pr.* 438.)
33. Obtain order extending time to serve same with notice of entry.
34. Get opinion or memorandum of judge, if one filed, or make affidavit that none was given, or if given that copy cannot be procured. Receive stenographer's minutes of trial. (Rule 41, G. P. R.)
35. Prepare proposed case before time to do so expires. (See No. 35 under Appeals from Judgments I, Supreme Court, page 42, *supra*.)
Thirty days after service of judgment with notice of entry.
(Rule III, Appellate Term Rules, and Rule 32, G. P. R.)

Proposed Case — Settlement.

- .. 36. Serve proposed case on respondent before time to do so expires.

Thirty days after service of judgment with notice of entry.
(Rule III, Appellate Term Rules and Rule 32, G. P. R.)

37. Enter in diary last day to receive amendments.

(Rule III, Appellate Term Rules, and Rule 32, G. P. R.)

38. Receive proposed amendments. (See form under No. 38, of Appeals from Judgments, Supreme Court, I. page 47, *supra*.)

Bear in mind that if respondent applies to you on last day to serve proposed amendments for an extension of time therefor it is too late for him to obtain such extension from the court if you deny same, as two days' notice is required. (*See Rules 32 and 33, G. P. R.*)

39. Enter in diary last day to serve notice of settlement.

Within 4 days after service of proposed amendments.
(Rule 32, G. P. R.)

40. If proposed amendments are served, mark them "allowed" or "disallowed."

41. Draw notice of settlement of case and exceptions before the judge who tried the action and serve within four days from service of proposed amendments. The date of settlement stated therein must not be less than four nor more than ten days after service of notice. (Rule 32, G. P. R.; § 997, Code. See Form on p. 49, *supra*.)

42. Enter in diary date of settlement.

43. Prepare memorandum for court on settlement and see that amendments contain references to pages of stenographer's minutes. (Rule 32, G. P. R.)

44. Settlement. (Rules 32 and 34, G. P. R.; § 997, Code.)

Submit to judge on settlement:

1. Proposed case.
2. Proposed amendments.
3. Stenographer's minutes of trial.

Printing Case.

4. Exhibits or models.

5. Memorandum as to settlement.

The settlement itself is usually informal.

Affidavits may be presented. The judge's recollection, assisted by the stenographer's minutes, controls.

But if there is a dispute, see 34 *Hun*, 547; 112 *N. Y.* 542; 40 *App. Div.* 86.

After appeal completed it is too late to move for resettlement.

On resettlement, see 112 *N. Y.* 592; 113 *N. Y.* 633; 34 *Hun*, 547; 7 *N. Y. Supp.* 321; 7 *N. Y. Supp.* 69.

45. See that judge signs order settling the case and ordering it on file. (§ 1353, Code.)

This order is usually endorsed on the original proposed case submitted to the judge.

46. Enter in diary last day to file case with clerk of City Court.

Ten days after settlement. (Rule 35, G. P. R. See note under Nos. 46 and 47, Appeals from Judgments I, Supreme Court, page 50, *supra*.)

47. Enter in diary last day to file with clerk of Appellate Term the printed return and affidavit of service of three copies and note of issue.

Ten days from date of settlement. (Rule III, Appellate Term Rules.)

48. Enter in diary last day to serve notice of argument.

Five days before commencement of term for which cause is noticed. (Rule II, Appellate Term Rules.)

49. Prepare papers for printed case. (See § 796, Code; Rule III, Appellate Term Rules; Rule 43, G. P. R., and see No. 49, Appeals from Judgments I, Supreme Court, page 53, *supra*.)

50. Receive proof of appeal book.

51. Submit same to opposing counsel for correction.

52. Receive proof with objections.

Certifying Return.

53. Agree upon changes.

54. When changes agreed upon have case printed.

Thirty copies are usually ordered. Blanks are usually left in three copies for signatures to stipulations and orders in the case, and the names printed in the remaining copies.

55. Receive printed case on appeal from printer.

56. Within ten days after settlement have stipulations settling case, waiving certification,* and consenting to filing of printed copy with clerk of City Court in three copies signed by attorney for respondent. (Rules 35 and 41, G. P. R. 3194A, Code.)

57. If respondent declines to sign stipulation, comply at once with Rule 35 by filing the original (typewritten) case and amendments as settled by the judge with the clerk of the City Court and have printed case certified by him or obtain extension of time to file case by order from the court. (Rule 35, G. P. R.; § 3194-A, Code.)

It is very unusual for attorneys to require certification of the case, and where such a refusal to assent to the usual stipulations is met after the case is printed, certain changes in the printed case become necessary. The clerk's certificate must be added, and the orders settling the case and ordering it on file must be changed as follows: instead of "on the annexed stipulation, etc.," must be inserted "upon the annexed certificate of the clerk of this court that the foregoing is a true copy of the case and exceptions, the judgment roll and all other papers on file herein."

58. Have the orders settling case and ordering it on file signed by trial judge in the three copies containing blanks.

* "The duty of the appellant where an appeal is taken to the Appellate Term from the City Court is prescribed in Rules 2 and 3 of the Appeal Term Rules of the first district. Section 3301 of the Code, providing that the stipulations of the attorneys for the parties to an action may take the place of the clerk's certificate to a copy of a paper thereof a certified copy is required, does not alter the effect of the provision of section 1315 requiring a return to the appellate court to be certified by the clerk of the court from which the appeal is taken (citing cases). In *Woolsey v. Lasher*, 108, 110, it was held that if the printed record does not contain the certificates required by law the question should be raised by a motion to dismiss." (*Seabury's City Court Practice*, 894. But see § 3194(a), Code, added in 1904.)

Filing Return — Points — Arguments.

59. File one signed copy of the printed case with clerk of City Court and direct him to make return.
60. Within ten days after settlement and at least eight days before first day of term serve three copies of printed return on respondent. (Rules II and III, Appellate Term Rules.)
61. Make and file affidavit of such service with clerk of Appellate Term and file note of issue.
62. Have points printed. (See Rules 40 and 43, G. P. R.; Rule II, Appellate Term Rules.)
63. Prepare notice of argument.
64. At least five days before first day of term serve same and get admission of service. (Rule II, Appellate Term Rules.)
65. Enter in diary last day to file with clerk of Appellate Term notice of argument with proof of due and timely service.

Four days before first day of term. (Rule II, Appellate Term Rules.)

Last day to serve three copies of points.

Four days before first day of term. (Same Rule.)

66. At least four days before first day of term serve one copy of points on respondent; and file with clerk of Appellate Term notice of argument with affidavit of due and timely service of same and due and timely service of three copies of points. (Rule V, Appellate Term Rules.)

File with clerk of Appellate Term 10 copies of printed case and 10 copies of points.

67. On day of argument before argument receive a copy of respondent's points. (Rule V, Appellate Term Rules.)
68. Argument:

There is nothing for counsel to do on the day of argument but to answer the case on the call of the calendar and submit the case when called or argue it when reached.

Not more than one counsel shall be heard on each side unless court otherwise orders and not more than thirty minutes will be allowed for argument to each side except by special permission, which is seldom granted. The number of counsel engaged does not extend time. (Rule 47, G. P. R.; Rule V, Appellate Term Rules.)

Argument.

No brief or memorandum will be received after argument, except by special permission, which is rarely granted. (Rule V, Appellate Term.)

Counsel for the appellant argues first. Then counsel for respondent and the court usually permits a few minutes to appellant to close.

HINTS ON APPEAL PROCEDURE.

VII.

From Judgments.

City Court of the City of New York, Trial Term, to Supreme Court,
Appellate Term.

From judgment entered on decision of judge.

1. If any memorandum or opinion given by judge, secure copy of same.
2. Order copy of stenographer's minutes.
3. Get exhibits.
4. Prepare your proposed decision, findings of fact and conclusions of law for submission on settlement of decree. (§ 2022, Code. See note under 4, Appeals from Judgments II, p. 67, *supra*.)
5. Submit same to judge upon settlement of decree. (See note under 5 of No. II, page 68, *supra*.)
6. If usual stay of execution and additional time to make a case not granted in opinion or memorandum given by judge, apply for same on settlement of judgment or move, on notice, for same before judge who tried case.
7. See that judgment contains stay of execution and additional time to make and serve a case, or if obtained on motion, draw and enter order granting stay and additional time to make case. Serve same with notice of entry on adversary.
8. When decision signed and copy thereof served with notice of entry, together with a copy of the judgment entered thereon with notice of entry, enter in diary:

1. Last day to serve and file notice of exceptions.

Ten days after service of judgment with notice of entry. (§ 994, Code, and § 1351, Code.)

2. Last day to appeal and to serve proposed case.

Ten days after service of judgment with notice of entry unless longer time granted. (§ 3190, Code.)

3. When stay expires.

Case On Appeal.

9. Prepare notice of exceptions to decision and findings.

This notice must state specifically what portion of the decision *e. g.* which findings of facts and conclusions of law are excepted to, and which refusals to find as requested are excepted to; (see Forms No. 279, 280, pp. 556-7,) and Appeals from Judgments II, Supreme Court, p. 67, *supra*.

10. Within 10 days after receipt of judgment with notice of entry, file exceptions with clerk of court and serve same on attorney for adversary. (§ 994, Code.)
11. Numbers 15 to 68 of Appeals from Judgments VI, p. 107, above, may now be followed, but in making up the case on appeal the following papers constitute the case (see § 997):

Statement under Rule 41 as to order, see 105 *App.*
Div. 476.

Notice of Appeal.

Pleadings and all papers on file with the judgment roll, viz.:

Summons.

Complaint.

Answer.

Demurrer or

Reply.

Order of reference (if any).

Report of referee (if any).

Decision.

Judgment.

Notice of exceptions,

And any other papers used.

Case:

Evidence.

Exhibits.

If questions of fact are to be raised, the case must also contain a statement that it contains *all the evidence* taken upon the trial of the action.

Stipulation settling case.

Order settling case.

Case On Appeal.

Stipulation waiving certification,*

or

The certificate of the clerk of the court.

Opinion of the court or affidavit of no opinion.

Order filing record in Appellate Term.

This order is only necessary in appeals
heard on case and exceptions. (§ 997,
Code.)

* See note, under 58, p. 59, *supra*.

HINTS ON APPEAL PROCEDURE.

VIII.

From Orders.

City Court of New York, Special Term, to Supreme Court Appellate Term.

1. Receive copy of order with notice of entry.

If all the papers used before the court are not recited in the order, move for a resettlement.

2. Consult §§ 1346-7-8, Code as to whether appeal lies.
3. Enter in diary last day to appeal and last day to file return.

Ten days from service of copy of order with notice of entry (§ 3190, Code), and at least 8 days before first day of term for which cause can be noticed. (Rule III, Appellate Term Rules.)

4. Draw notice of appeal. (See Forms Nos. 284, 285, pp. 562-3, and §§ 1300-1301, Code.)
5. Serve notice of appeal.
6. File notice of appeal with clerk of City Court of City of New York.
7. Prepare papers on appeal. (See notes under 8 of Appeals from Orders, IV, p. 79, *supra*.)
8. Send papers on appeal to printer and receive proof.
9. Submit proof to attorney for respondent for corrections.
10. Receive proof with adversary's corrections.
11. Have papers on appeal printed. (See Rule 43, G. P. R.)
12. Submit three copies of printed papers to attorney for respondent, and have stipulation waiving certification signed.
13. If respondent's attorney refuses to so stipulate have papers certified by the clerk.
14. Not more than 10 days after service of notice of appeal, and at least eight days before first day of term for which appeal is noticed, serve three copies of printed return on attorney for respondent, and make affidavit of service. (Rule III, Appellate Term Rules.)
15. File one signed copy of the printed papers with clerk of City Court and direct him to make return.

Printed Papers — Points.

16. See that return is filed with the clerk of the Appellate Term by the clerk of the City Court, at least eight days before the first day of the term for which the case is noticed.
17. Enter in diary:
Last day to file affidavit of service of three copies of printed papers on appeal.
Eight days before first day of term for which appeal is noticed. (Rule II, Appellate Term Rules.)
Last day to serve and file notice of argument.
Six days before first day of term.
Last day to serve and file appellant's points.
Four days before first day of term. (Rule V, Appellate Term Rules.)
18. Prepare notice of argument.
19. At least eight days before first day of term file with clerk of the Appellate Term affidavit of service of three copies of printed papers on appeal. (Rule II, Appellate Term Rules.)
20. At least six days before first day of term, serve notice of argument and obtain admission of service.
21. Within same time file with clerk of Appellate Term notice of argument with proof of service by affidavit. (Rule V, Appellate Term Rules.)
22. Prepare and print points. (See Rule 40 and 43, G. P. R.)
Must have calendar number on first page. (Rule V, Appellate Term Rules.)
23. At least four days before first day of term serve a copy of appellant's points on respondent; and file with clerk of Appellate Term 10 copies of printed papers on appeal and 10 copies of points with proof of timely service of one copy. (Rule V, Appellate Term Rules.)
24. On day of argument, before argument, receive three copies of respondent's points.

PART III.

LETTERS TO CLIENTS.

The following, although in the form of letters, are mainly checks for attorneys rather than to be used *in extenso* in letters to clients. They may, however, suggest many terms and by omitting those not pertinent may be used as a basis for such letters.

I.

LETTER TO NEW CORPORATION.

.....

To.....

GENTLEMEN: — Now that your firm has been turned into a corporation by certificate of incorporation filed in the office of the Secretary of the State of New York at Albany on the..... day of....., 19 , and in the office of the clerk of the County of New York, on the day of, 19 , we desire to call to your attention a few of the matters you might otherwise overlook.

This is a general letter and the instructions and suggestions must be viewed subject to the circumstances of your company.

Money in bank should be transferred by check to the corporation.

It is wise to notify debtors to large amount that moneys that are due the firm have been assigned to the corporation, and that payment should be made to it.

To relieve the firm partners of future liability, actual personal notice of the dissolution should be brought home to every person with whom the old firm has dealt, and as to those with whom the firm has not dealt, notice should be given of the dissolution by advertising in the newspapers. (Commercial expediency sometimes makes this unwise.)

It is customary to send out a letter in the following form. (See Form I, hereto annexed.)

To New Corporation.

You should see that the patents and copyrights belonging to the old firm are duly assigned by instruments such as required to be made, filed, or recorded in various public offices.

Assignment of United States patents must be recorded within three months after execution, and in other countries filed or recorded in prescribed time.

In the event of your holding stocks or bonds standing in the name of the old firm they should be transferred on the books of the respective companies to the name of the new corporation.

The lease of the premises occupied by the corporation, if assigned to it, should have an endorsement of consent of lessors placed thereupon.

Assignments of mortgages should have been taken on separate blanks, so that same may be properly recorded.

Deeds of real estate should have been taken in separate instruments, properly acknowledged, so that they may be recorded in the proper places of record.

Policies of fire, casualty, or employers' liability insurance in the name of the old firm should be assigned to the corporation and the consent of the insuring companies to such transfer should be endorsed on the policies.

Where the firm has important contracts, the consent of the other contracting parties should have been secured before incorporation, and after incorporation their consent to the assignment of the contract should be obtained, so that in case of breach of contract, proper action could be maintained by the corporation.

The old books of account should be closed and new books of the corporation should be opened at once.

Be very careful in signing any documents on behalf of the corporation to see that the name of the corporation appears as the signer and as a party to all instruments, and then add "By as its president, and by as its secretary" (or treasurer, as the case may be).

You will constantly need a corporate acknowledgment and a form is hereto annexed, and marked "Form 2."

Whenever an important contract is made by your company, a copy of the authorization by resolution of the board of directors should be annexed and a form for that purpose is hereto annexed, marked "Form 3."

You should realize that if there is any State in which you are to do much business, you should ascertain whether, under the laws

To New Corporation.

of that State any requirement exists for the filing or recording of any papers in that State, and what the effect is, in case you fail to file such papers.

In most of the States you are prohibited from suing therein if you are doing business in that State without filing a certificate, but if you are engaged in interstate commerce, perhaps to such extent this requirement, if it exists, would not apply.

Your company should keep copies of all tax or other reports or certificates rendered or made to any public officer, either with the minutes or spread at length thereupon.

In preparing to hold any meeting the minutes of the previous meeting should be examined, so that the minutes of the contemplated meeting will show compliance with any directions of the previous meetings.

Should any resolution be passed which is intended to be of a permanent character it should not be passed in the form of a motion, but should be an amendment or addition to the by-laws, and if any amendments are made to the by-laws you should see that they are at once entered in the by-laws themselves; that is, in the copy used by the company, so that they may be relied upon at all times as fully revised.

When persons holding stock in your company as executors, administrators, guardians, trustees, or in any other representative or fiduciary capacity, desire to vote at your meetings it is customary to ask for proof of their right so to do, and such proof should be filed with the secretary of the company.

Your company should not buy or become the holder of any of its own stock under any circumstances, without first consulting counsel.

Neither a stockholder nor director can vote by telephone, telegraph or mail.

If your company holds stock in any other company and desires to vote upon it, see that one of your officers is given a proxy authorized by resolution of your board of directors.

Remember that when one-half of your capital stock is paid in, a certificate must be made of such fact within thirty days thereafter.

Remember that you cannot divide, withdraw by dividend, or in any way pay to the stockholders, or any of them, any part of the *capital* of your corporation, or reduce your capital stock without proceedings at law, nor can you loan moneys to any

To New Corporation.

stockholder therein, and it is also provided that you shall not as a company, or any officer thereof, discount any note of any stockholder to enable any stockholder to withdraw any of the money paid in by him on his stock.

Consult the corporate calendar which is hereto annexed once each month.

You cannot issue your stock or bonds except for money, labor done, or property actually received for the use and lawful purposes of your corporation. No stock can be issued for less than its par value.

You can have no subscription to your stock made conditionally.

It is also very important to know that if your corporation should refuse to pay any of its obligations when due, you cannot in any way make a transfer of your property or safely do any act thereafter without first consulting counsel.

It is always unwise to make any tax reports or other reports to the authorities without consulting counsel.

You should notify safe deposit companies and have name of the vault changed to that of the corporation.

You should, in all cases, where you desire the company to be unquestionably bound, affix the seal of the corporation to its documents, although a seal is not always necessary.

Your company should take actual and tangible possession of all assets and property transferred to it immediately after your right to do so exists.

In case you own real property cause a certified copy of your certificate of incorporation to be recorded in the office of the county clerk of the county in which the same is situated if advisable.

The corporation should be very careful to make a full and complete inventory of all the property and assets with which it commences business, or which is paid into the company's treasury upon each issue of stock in the first instance.

You should have at least one or two certified copies of certificate of incorporation always on hand.

New letter books should be started for the corporation.

Prepare statement for newspapers as to matter you desire published in reference to the new corporation.

Remember that in most foreign States in which you do business, if you have property situated therein, the same is subject to attachment on the sole ground that you are a foreign corporation.

 Proposal To New Corporation.

See that your new cable name and address is given to the cable companies.

Provide yourself with extra copies of the by-laws, signed by the secretary, stating "The above is an exact and correct copy of the by-laws copied from the records of the corporation and revised up to date.

.....Secretary."

As many public officers will require copies to be filed as a condition precedent to their doing official acts.

Remember that upon the dissolution of the old concern all contracts with employees terminate and sometimes it is wise to have that fact clearly understood between the corporation and the employees retained and a new contract made between the corporation and such employees.

Consult counsel as to regulations of factory, labor and other laws which may affect your industry.

(Form 1.)

(Date)

To

GENTLEMEN:—We desire to inform you that the firm composed of and doing business in the city of New York at..... has been dissolved by mutual agreement, and that the property and assets formerly belonging to the old firm have been transferred to the Company, a corporation incorporated under the laws of the State of New York, formed to carry on the business formerly carried on by the said firm, and that said corporation has assumed the indebtedness of the old firm.*

We hope that the new company may enjoy the pleasant business relations that existed in the past with the old firm, and we believe that with increased facilities, the business entrusted to our care will receive prompt and careful attention.

Yours truly,

(Signed by members of the old firm and the corporation.)

* Insert statement that one or more members of the old firm will continue to take an active interest in or direction over the new company and that the business will be conducted on the old lines.

Corporate Acknowledgment — Resolution.

(Form 2.)

NEW YORK REAL PROPERTY LAW, SEC. 258.

The acknowledgment of a conveyance or other instrument by a corporation must be made by some officer thereof, authorized to execute the same by the board of directors of said corporation. The certificate of acknowledgment must be in substantially the following form, the blanks being properly filled:

“State of New York,
County of..... ss.:

On the day of
....., in the year
before me personally came
to me known, who, being by me duly sworn, did depose and say
that he resided in that he is the.....
of the Company, the corporation de-
scribed in and which executed the above instrument; that he knew
the seal of said corporation; that the seal affixed to said instru-
ment was such corporate seal; that it was so affixed by order of
the board of directors of said corporation, and that he signed his
name thereto by like order.”

(Signature and office of officer taking acknowledgment.)

If such corporation have no seal, that fact must be stated in
place of the statements required respecting the seal.

(Form 3.)

At a meeting of the board of directors of the.....
..... Company, a corporation duly incorporated
and organized under and by virtue of the laws of the State of
New York, and having its principal office and place of business
located in the Borough of Manhattan, City, County and State of
New York, duly convened at the office of said company in New
York city, pursuant to the by-laws of said company, held on the
..... day of the following resolution
was duly moved, seconded and adopted and ordered to be en-
tered upon the minutes of the proceedings of said meeting by
the secretary thereof.

Certificate Of Secretary.

(Form 4.)

RESOLVED, (take in resolution.)

The undersigned, the secretary of the company above named, has compared the foregoing resolution with the original thereof as recorded in the minute book of said company, and hereby certifies the same to be a correct and true transcript therefrom and the whole of said original resolution.

WITNESS the seal of this company, attested by me.

Dated

Attest:

.....Secretary.

(Corporate seal.)

II.

LETTER OF INSTRUCTION TO GENERAL GUARDIAN OF INFANT.

Dear Sir:

We desire to advise you that letters of guardianship, dated theday of, 19.., have been issued to you upon the estate of, an infant under the age of 14 years.

These letters were issued by the Hon..... one of the Surrogates of the County of....., upon the petition filed by you on the day of, 19.., and as you now actually enter upon your duties as Guardian, we desire to inform you in a general way as to your duties and responsibilities and to make some suggestions that may be useful to you in your representative capacity:

You should

1. Make and file with the Surrogate an accurate inventory of the infant's property. It is wise to have the property appraised.
2. Open a separate account in your representative capacity with some bank of good repute or a trust company preferably, and deposit therein all trust funds as soon as received, until invested, to credit of yourself as guardian, at agreed rate of interest, if possible.
3. If the funds of the ward are not invested, invest them as soon as it can reasonably be done, and so far as possible keep the same and the income thereof invested till your ward becomes 21 years of age, or until by reason of his death or other cause, you are sooner called upon to account and pay over the funds to others.
4. Procure a book and devote it exclusively to matters pertaining to the guardianship, and in it set down at the time of its occurrence every item of income and expenditure on behalf of the ward intended to be a credit or a charge against yourself.
5. Take receipts for all expenditures, except for trifling sums, in duplicate, and preserve them until the final accounting.

Instructions to General Guardian.

6. Expend no more than the income of the ward for his support and education, without an order of the court for that purpose. Section 2846 of the Code provides as follows: "Upon the petition of the general guardian of an infant's person or property, or of the infant, or of any relative or other person in his behalf the Surrogate, upon such notice to such persons, if any, as he thinks proper to notify, may make an order, directing the application by the guardian of the infant's property to the support and education of the infant of such sums as to the Surrogate seems proper out of the income of the infant's property, or, where the income is inadequate for that purpose, out of the principal."
7. Keep constantly a list of the articles of property in your custody as guardian.
8. Keep a record of the disposing of any piece of property and how disposed of, to whom and for what.
9. Keep an account of each item of disbursement, and of amount and nature of each investment of money.
10. Under no circumstances use funds of ward for your own use. You should not loan the money of your ward upon personal security, for if you do so, and the maker of such securities subsequently becomes insolvent, you may be compelled to make good the loss to the estate, and in addition may be compelled to bear the expense of litigation made necessary to collect the funds thus improperly invested. The courts have generally held that trustees must invest in loans on real estate, in the bonds of the State, or the United States, and that neither good faith, care, nor diligence will protect them in the event of loss, where this rule is departed from. No loan should be made upon real estate for more than half its value, and in every instance there should be an official search showing a clear title to the land. If satisfactory securities cannot be obtained after reasonable efforts to do so, the money should be deposited in some trust company or savings bank, where it will draw interest until securities can be obtained. (See Laws 1906, chap. 581.) See 4 *N. Y. Suppl.* 472, and Laws 1907, chap. 669.

III.

LETTER TO EXECUTOR.

Dear Sir:

We desire to advise you that letters testamentary, dated theday of, 190.., have been issued to you and on the estate of..... late of, who died on the day of at

These letters were issued by the Hon....., one of the Surrogates of the County of New York, the will having been proved on the day of and petition for probate having been filed on the day of As you now actually enter upon the discharge of your duties as executor, we desire to inform you in a general way as to your duties and to make some suggestions to you in your representative capacity.

It is your duty, in addition to giving attention to those matters included in the enclosed memorandum which have not already been attended to:

1. To open separate bank account in your representative capacity. Pay bills with checks upon this account. Where surety company is on bond checks will have to be countersigned by the company.
2. To reduce to possession as far as possible all the personal property, tangible and intangible. (See instructions and law on back of letters, if any.)
3. To notify banks, trust and safe deposit companies, and corporations in which decedent held stock, by leaving certificate with them, if desired. These institutions usually require waivers from the State Comptroller before parting with securities or money of the decedent, and usually decline to permit decedent's safe deposit box to be opened, prior to the obtaining of such waiver, except in the presence of a representative of the State Comptroller. Counsel should be consulted for the purpose of obtaining such waivers.

Instructions To Executor.

4. To notify all life insurance companies, benefit orders, and mutual societies, by leaving certificates with them; obtain forms for proofs of death and file with respective companies, and if payable to estate, collect insurance and benefit moneys.
5. To notify all debtors of your appointment by printed notice and demand payment of account and collect all outstandings.
6. To take all property and papers of decedent into your possession and make full inventory of all personal property in duplicates in presence of counsel or other witness. If the affairs of the deceased are at all complicated or there is the slightest anticipation of misunderstanding, consult counsel and have appraisal made by appraisers appointed by the court instead of relying on private inventory. If you find that any of the assets of the estate are in the hands of third parties who refuse to deliver them, at once notify counsel so that discovery proceedings can be had.
7. If there is a large sum of money in your hands at any time, to place same at interest in some trust company.
8. To keep accurate account of receipts and disbursements, and to this end you can obtain executors and administrators' account book, or get copy of final account blank for form.
9. To obtain blank forms of proof of claim, have vouchers printed and obtain other necessary stationery, etc., of form to be most used, according to nature of estate.
10. To always insist upon sworn proof of claim, and always take receipt for disbursements in duplicate, with waiver of citation upon account.
11. To examine all leases and contracts to which decedent was a party, and ascertain decedent's rights thereunder.
12. Any business deceased was engaged in alone you may proceed to wind up, but if he had partners, it would be wise to consult counsel before doing so.*
13. To turn all personal property into cash unless parties interested, or who have appeared, consent in writing to retention in kind, or unless sale would cause a loss to parties entitled to property. Unless the will otherwise directs, sale should be at public auction and notice given to all parties interested.

* See Letter to Surviving Partner page 156.

Instructions To Executor.

14. If any property is found in which others are supposed to have or claim any interest do not part with the property, and if any packages are found among decedent's effects, sealed or indorsed, do not open or disturb same without legal advice, since the order in which these documents lie may be of importance.
15. Obtain blank book and keep a memorandum as to everything that is done and record every important transaction or conversation therein.
16. It is usual to pay witnesses to the will a small amount for their attendance upon probate, as for example, five, ten, or fifteen dollars, according to amount of estate.
17. Pay funeral expenses and expenses of probate, but make no other payments without consulting counsel, and when paying a legacy take waiver of citation of accounting proceedings, and get receipt and release. If in your opinion the bill for funeral expenses is excessive viewed from the station in life of the decedent, do not pay without consulting counsel.
18. Notify fire insurance companies of death and change of ownership of property and obtain binders, and have insurance policies held by testator transferred to estate.
19. Do not compromise a debt without leave of court.
20. Promptly reject any claim not known or reasonably believed to be valid.
21. Obtain advice of counsel before making any payment or apportionment to widow in lieu of dower.
22. Your signature to an instrument as one of two executors will bind the estate, but as to all matters wherein you act as trustee under the will the signature of your co-trustee is necessary to make the instrument valid.
23. As an executor you cannot account and proceed to distribute the estate until one year from your qualification as executor has elapsed. See Laws 1907, chap. 669.

As executor it may be generally stated that you only administer upon the personal property, and have nothing to do with the real estate so long as there is sufficient personalty to pay decedent's debts. Make no investments without consulting counsel.

Your commissions, to be divided between you, will be 5 per cent. on the first \$1,000, 2½ per cent. on the next \$10,000, and

Instructions To Executor.

1 per cent. on the balance of all sums received and paid out by you, unless the estate is over \$100,000 personalty, above debts, in which case separate commission will be allowed, when there is more than one executor, to each if not more than three. These commissions are not subject to use by you until your accounts are settled by the surrogate.

A short method of computing commissions where the estate is over \$10,000 is to take 1 per cent. of the total and add \$190.

IV.

GUIDE FOR EXECUTOR'S ATTORNEY.

The following to be typewritten and filled in and checked off in each matter:

Estate of
Names of executors.....
Address of executors.....
Date of death of decedent.....
Date of filing petition for probate.....
Date of granting of letters.....
Who qualified

Check off each item as it is attended to and insert date and other remarks for future reference.

I. Probate of Will (No Infants).

1. Have copies of will made.
2. Ascertain names and addresses of all persons interested with degree of kinship by making family tree.
3. Draw, verify, and file petition for probate with original will, and two copies thereof. (§ 2614, Code.)
4. File affidavit of estimated value of real and personal property. (§ 18, ch. 399, Laws 1892.)
5. Citation issues and service thereof made (unless waivers are obtained). (§ 2615, Code.)
6. Notify witnesses to will of date and place of probate.
7. Prepare affidavits of witnesses and oath of executors.
8. Obtain and file and record renunciations. (§ 2639, Code.)
9. Hearing before probate clerk. Executors take oath. (§ 2620, Code.)
10. Will admitted, date Letters are issued date.....Liber.....page.....
11. If decedent non-resident, file certified copy of will and letters within ten days. (§ 2503, Code.)
12. Obtain original letters and many certificates that letters have been granted.
13. File and record will in counties and foreign jurisdictions in which decedent owned real estate.

Claims — Transfer Tax — Accounting.

Claims.

14. Petition for order to advertise for claims.
15. Order or direction is made to advertise for creditors.
16. Publish advertisement for creditors in papers designated in order.
17. Obtain affidavit of publication of notice to creditors.
18. After thirty days after probate obtain order compelling executor to qualify, or be excluded, if such person has not renounced or accepted the executorship.
19. Order of exclusion upon expiration of time to qualify if it has been required.

Transfer Tax.

20. Draw and file petition for appointment of appraiser for transfer tax.
21. Order is made appointing appraiser.
22. Draw and file affidavit of debts and expenses and taxes of estate and copies of will with appraiser.
23. Have appraisal.
24. Appraiser make duplicate reports, one filed in surrogate's office and other with State Comptroller by the appraiser.
25. Decree entered fixing and assessing tax.
26. Surrogate gives notice of taxation.
27. Obtain certified copy of decree fixing and settling transfer tax.
28. Serve copies of certified copy of order on attorneys for parties interested.
29. Pay tax and obtain duplicate receipts from Comptroller, file one with and have other countersigned by Comptroller.

Distribution and Accounting.

30. Obtain waiver of citation on accounting upon payment of any legacy before decree.
31. Submit to attorneys for parties interested, the proposed decree, and the notices of appearance, waivers of service of citation and bill of costs, copy of will and affidavit of time spent on accounting. Obtain consents, acknowledgments and waivers, and file same with petition, account, proposed decree, transfer tax receipt countersigned, vouchers and affidavit of publication.
32. Citation on accounting issues if waivers are not obtained from all.

Distribution.

33. Serve citation and copy of account on surety company, or personal sureties, and all others interested.
34. Obtain decree.
35. Distribute according to terms of decree and take acknowledged receipts in duplicate.
36. File receipts and acknowledgments with surrogate.

Note. — Personal property not disposed of by will passes according to the Statute of Distributions to be found in New York Code of Civil Procedure, §§ 2732, 2733 and 2734. See also *Robbins v. McClure*, 100 N. Y. 328.

Real estate not disposed of by will descends according to the Statute of Descents, Laws of 1896, ch. 547, art. ix., p. 618. (Birdseye's R. S. (3d ed.), p. 3078.) See *Hiles v. Fischer*, 144 N. Y. 306, and *University Law Review*, vol. I, page 113 *et seq.*

V.

LETTER OF INSTRUCTION TO ADMINISTRATOR.

Dear Sir:

We desire to advise you that letters of administration, dated the.....day of.....have been issued to....., on the estate of....., late of....., who died on the.....day of....., at.....

These letters were issued by the Hon....., one of the surrogates of the county of....., upon the petition for same filed on the.....day of.....; and as you now actually enter upon the discharge of your duties as the administrator, we desire to inform you in a general way as to your duties, and to make some suggestions to you in your representative capacity.

It is your duty, in addition to giving attention to those matters included in the inclosed list, which have not already been attended to:

To open a separate bank account in your representative capacity and pay bills with checks upon this account.

Where surety company is on bond checks will have to be countersigned by the company.

To reduce to possession as far as possible all the personal property, tangible and intangible (see instructions and law on back of letters, if any).

To notify banks, trust, and safe deposit companies, and any corporations in which deceased had stock, by leaving certificate with them if desired. These institutions usually require a waiver from the State Comptroller before parting with securities or money of the decedent, and usually decline to permit the opening of safe deposits boxes prior to the obtaining of such waiver except in the presence of a representative of the State Comptroller. Counsel should be consulted for the purpose of obtaining such waivers.

To notify all life insurance companies and benefit societies by leaving certificates with them; obtain forms for proofs of death and file with respective companies, and if payable to estate, collect insurance and benefit moneys.

Instructions To Administrator.

- To notify all debtors of your appointment by printed notice and demand payment of account and collect all outstandings.
- To take all property and papers of decedent into your possession and make full inventory of all personal property in duplicate. If the affairs of the decedent are at all complicated, or if there is the slightest anticipation of misunderstanding, consult counsel and have appraisal of estate made by appraisers appointed by the court, instead of relying on a private inventory.
- If any property is found in which others are supposed to have any interest do not part with the property, and if any packages are found among decedent's effects, sealed or indorsed, do not open or disturb same without legal advice, since the order in which these documents lie may be of importance.
- If there is a large sum of money in your hands at any time, to place same at interest in some trust company.
- To keep accurate account of receipts and disbursements, and to this end you can obtain executors' and administrators' account books, or get copy of final account blank for form.
- To obtain blank forms of proof of claim, have vouchers printed and obtain other necessary stationery, etc., of form to be most used, according to nature of estate.
- To always insist upon sworn proof of claim, and always take receipt for disbursements in duplicate.
- To examine all leases and contracts to which deceased was a party, and ascertain decedent's rights thereunder.
- If deceased was engaged in business alone you may proceed to wind up same, but if he had partners it would be wise to consult counsel before doing so.* The business must be wound up within a reasonable time.
- To turn all personal property into cash unless parties interested, and who have appeared, consent in writing to some other disposition, or sale would cause a loss to parties entitled to property. Sales should be at public auction, and notice given to all parties interested.
- To obtain blank book and keep a memorandum as to everything that is done, and record every important transaction or conversation therein.

* See Letter to Surviving Partner page 156.

Instructions To Administrator.

To pay funeral expenses and expenses of obtaining letters, but make no other payments without consulting counsel.

If, in your opinion, the bill for funeral expenses is excessive, viewed from the station in life occupied by decedent, do not pay without consulting counsel.

You should not make partial distribution until the time is up for presentation of claims by creditors, unless to your own knowledge, the estate is amply solvent. No partial distribution should be made where any of the parties interested are infants, without consulting counsel.

If you find that any of the assets of the decedent are in the hands of third parties, who refuse to deliver them at once notify counsel so that discovery proceedings can be instituted.

To notify fire insurance companies of your appointment.
See Laws 1907, chap. 669.

Note. — It may be stated in general terms that as administrator you only administer upon the personal property, and provided there is sufficient personalty to pay funeral expenses and debts, you have nothing to do with the real estate.

Your commissions to be divided between you will be 5 per cent. on first \$1,000, 2½ per cent. on next \$10,000 and 1 per cent. on balance of all sums received and paid out by you, unless the estate is over \$100,000, personalty above debts, in which case separate commission will be allowed each administrator up to three.

A short method of computing commissions where the estate amounts to more than \$10,000 is to take 1 per cent. of the total and add \$190.

VI.

GUIDE FOR ADMINISTRATORS' ATTORNEY.

The following to be typewritten and filled in and checked off in each matter:

Estate of
Late of
Died..... at
Administrators
Letters granted
Date of publication for creditors.....
Date of last publication for creditors.....
Who entitled to letters of administrators. (§§ 2660, 2661, 2662, 2663, Code.)

Duties of Administrators.

1. Look for will.

Appointment and Qualification.

2. File petition for appointment and affidavit of estimated value of real and personal property. (§ 18, ch. 399, L. 1892.)
3. Unless waivers are obtained for all parties, citation must be issued.
4. Serve citation unless waivers are obtained.
5. Prepare bond, and file oath of administrator, unless same was filed with petition.
6. On return-day attend with bondsmen and administrator. Have sureties justify and file bond.
7. Obtain letters and certificates of appointment.

Transfer Tax.

8. Petition for appointment of appraiser on transfer tax.
9. When order is made appointing transfer tax appraiser, draw affidavit of debts and expenses of estate to reduce taxable amount.
10. Appraisement.
11. Draw order fixing and settling transfer tax.
12. Obtain certified copies of order and serve copies on attorneys for parties interested.
13. Pay tax as soon as possible.
14. Obtain duplicate receipts.
15. Have same countersigned by Comptroller, State of New York.

Claims — Accounting — Distribution.

Claims.

16. Petition for order to advertise for creditors.
17. Advertise for claims in papers specified in order.
18. Obtain affidavit of publication of notice to creditors.

Distribution and Accounting.

19. Submit to attorneys for parties interested the proposed decree and the accounts with vouchers and receipts for transfer tax, affidavit of publication for creditors, waivers, bill of costs. Obtain consents and waivers, and file same with petition for final accounting.
20. Obtain citation to accounting.
26. Serve citation unless waivers of service of same are obtained.
27. Decree entered.
28. Distribution.
29. File receipts from distributives under decree, acknowledged.

Note. — Personal property not disposed of by the will pass according to the Statute of Distributions to be found in New York Code Civil Procedure, §§ 2732, 2733 and 2734. See also *Robbins v. McClure*, 100 N. Y. 328.

Real estate not disposed of by will descends according to the Statute of Descents, Laws 1896, ch. 547, art. ix., p. 618. (Birds-eye's R. S. (3d ed.), p. 3078.) See *Hiles v. Fischer*, 144 N. Y. 306, and *University Law Review*, vol. I, p. 113 *et seq.*

VII.

LETTER TO ASSIGNEE FOR BENEFIT OF CREDITORS.

(Address to assignee.)

Dear Sir:

As you are assignee of....., under a general assignment for the benefit of creditors, we beg to hand to you the following letter of general information as to your duties which we believe will greatly assist you:

Take actual and tangible possession of the office, store, factory, and property (including cash on hand), of the assignor immediately after delivery of assignment to you.

Cause the general assignment to be recorded in the county clerk's office, in the county where the assignor resided, or carried on business at the date of the assignment, and obtain certified copies.

If co-partnership, cause to be recorded in county where principal business of such co-partners is situated. When real property is part of the property assigned, and is situated in a county other than the one in which the original assignment is required to be recorded, obtain certified copies of assignment, and cause same to be filed and recorded in each county where such property is situated. Where property is situated outside of State, see local counsel as to where to file same.

Make inventory of each paper or document and security found in the safe or desk of assignor, and of all books of account.

Have several extra copies of assignment made and certified.

Notify immediately each bank in which assignor has funds, and as soon as possible serve them with certified copy of assignment and draw funds out of such banks. Also notify safe deposit companies and corporations in which assignor held stock.

Retain local counsel in places where assignor owns and has property.

Do not accept any goods after assignment without consulting counsel.

Open bank account with any cash found, and leave copy of general assignment with such bank and pay all bills solely by check on this account.

Instructions To Assignee For Creditors.

Do not mingle funds of assignor with your own funds.

Examine leases, contracts, and any other papers that might require immediate attention and notice to be given.

Open and keep separate and distinct and accurate books of account as assignee.

Examine fire insurance policies and life insurance policies collectible by assignee, and notify companies of change of ownership and arrange as to insurance.

Remember that you cannot carry on business or continue business in any way except with the consent of the creditors. If the majority of the creditors will assume the risks, it is sometimes essential that business be carried on for a short time in order to realize better prices. Distinction should be made between a retail and wholesale business. The court will not countenance a long continuance of the business. See *Levy's Accounting*, 1 Abb. N. C. 577.

Take steps to preserve perishable property.

Put watchman in immediate charge of places requiring same.

Order combination to be changed on safe.

Notify principal creditors by letter, of assignment.

File order with post office to have mail sent to assignee.

Prepare statement for newspapers as to matter you desire published.

Make arrangements with lessor as to temporarily continuing in possession of premises. The assignee should immediately after taking possession of the property, ascertain whether the lease or leasehold has any value, and whether it can be sold for profit. If it has no value, the assignee should at once disaffirm it as far as he is concerned and make the arrangements as suggested. The assignee has a reasonable time to determine whether he shall accept or reject the lease. If he occupies the premises for any length of time he may possibly render himself personally liable for the rent.

Notify banks in which you have moneys deposited that same is to be drawn upon countersignature of surety company, and notify surety company that banks have been so notified.

Order rubber stamps (a) for indorsements of checks and (b) one with name of assignee and "assignee of (insert name of assignor) for benefit of creditors." (c) Received payment.

190. (Name of assignee) assignee for the benefit of creditors of "name of assignor."

 Instructions To Assignee For Creditors.

Order letter paper, also envelopes with memorandum on outside in corner as follows: "If not called for in ten days, postmaster will please return to (insert name of assignee) Assignee, St., New York City."

Remember that your assignor may be put into bankruptcy at any time within four months from the making of assignment, in which case assignment becomes void. Assignee is not entitled to any commissions or any allowance for counsel fee, but will be allowed, in an action for an accounting brought by the trustee in bankruptcy, compensation for such services as he may have rendered which have proven beneficial to the estate, and which the trustee in bankruptcy might have himself performed out of which he is supposed to pay for his counsel. (Examine Bankruptcy Law.)

Make arrangements in regard to temporary use of telephone, motor, and such other services as the assignor may be enjoying under contract.

Make no payments whatever, excepting for preservation of perishable property, nor sales, until after your bond has been approved and filed, and after bond is filed pay employees as hereinafter provided. But if there is perishable property which must be quickly sold and it is imperatively necessary to make other sales before the inventory has been made and the bond filed, it is well to apply to the court for a provisional bond.

Reject unprofitable property and contracts.

Make up schedules and inventory as required by law, remembering that assignor has twenty days in which to file same, and if he fails to do so within twenty days, assignee should file a provisional bond (although this is not usual), but in all events has ten days additional to make up schedules and inventory, and when schedules and inventory are filed by assignee be careful to have affidavit of disinterested experts as to value of various classes of property included among assets of assignor. In making up the inventory carefully note in separate columns the nominal and actual values of the personal property, and in case of real property the assignee should state its full and true value, taking into consideration the actual sales during the previous year. There should also be a recapitulation in the following manner:

Debts and liabilities amount to.....	\$
Assets, nominal value	\$
Assets, actual value	\$

Instructions To Assignee For Creditors.

Carefully state in a separate sheet any contingent liabilities that the debtor may owe.

Prepare proof of claim for wages and salaries actually due and owing to employees at date of assignment within one year past, with receipt at bottom. Also draft and have printed notices to debtors and send same out.

Reduce to possession as soon as and as far as possible all the personal property, tangible and intangible.

While making up schedules and inventory make arrangements with surety company to obtain bond. If possible make three copies of schedules and inventory at same time.

Property held in trust by a debtor does not necessarily pass to the beneficiary. It may be transferred to a new trustee on account of the trustee's insolvency. The terms of the trust may not allow it to be transferred to the beneficiary, as he may only be entitled to the income, rents or profits.

Equity will follow the trust funds through any number of transmutations, and give it to the beneficiary so long as it can be identified in specie, and perhaps sometimes will go even farther.

As to money in bank, it passes to assignee, and he has all the rights which the depositor had, and bank has no lien for amount of notes discounted by bank if they have not yet matured.

Money in transit to assignor not due to him does not pass to assignee.

Be careful to note in schedules and inventory dower rights of wife of assignor in real estate.

The assignee has no power to perform contracts made by the assignor. If contracts are not completed, it may be advisable for the assignee to complete them; but before doing so he should call a meeting of creditors and get their consent and thereby allow the creditors to assume the risk. It is sometimes necessary that contracts be completed by the assignee in order to produce dividends from the assigned estate.

When in doubt as to what course to take, remember you can ask the court for instructions.

By virtue of the provisions of the Act of 1858, ch. 314, an assignee for the benefit of creditors is authorized to disaffirm, treat as void and resist all acts done, transfers and agreements made, in fraud of the rights of any creditor interested in the estate held by the assignee. Under this statute the assignee acquires all the rights of a judgment creditor to reach property

Instructions To Assignee For Creditors.

fraudulently transferred by the assignor, and he can maintain an action to reach such property before the recovery of a judgment against the assignor.

Since the assignee has the exclusive right of action, it follows that he will be liable for a negligent omission to assail fraudulent transfers made by the assignor prior to the assignment. He may ask for instructions from the creditors and for indemnity if they desire him to proceed with such actions.

Creditors have the right to examine books of the assignor as well as those of assignee.

All property must be turned into money. The assignee cannot sell on credit nor at retail, but may sell at public or private sales as may appear to be most for the interest of creditors. If by auction the assignee must sell by ten days' notice and by printed catalogue in parcels and file a copy of the catalogue with the prices obtained with his final account; twenty days' notice of advertisement in case of real estate. Sales on credit should only be made with leave of the court.

If there is a large sum of money in your hands at any time, place same at interest in some trust company.

Neither the assignee nor his attorney can purchase at the sale.

Do not compromise any claim due the estate without leave of court.

If any claim is presented which you have reason to believe to be improper in any way, reject it under advice of counsel.

A secured creditor is entitled to prove his debt and have dividend upon the full amount of his claim irrespective of the securities held by him.

Never pay without obtaining proof of claim and a voucher, unless the account amounts to less than \$20.

In the distribution of assets, wages, or salaries actually owing to the employees at the date of assignment for services rendered within one year prior thereto are preferred before any other debt whether or not the assignment so provides, but do not pay any person more than \$300, because the bankrupt law gives preferences to this amount only, and if the assignor be thrown into bankruptcy any payment over \$300 may be disallowed.

The assignee is entitled as commissions to 5 per cent. on the whole sum of money which comes into his hands only after the court has approved his account and has not found him delinquent.

Letter to Debtor of Assignors.

(Name of Assignors.)

(Name of Assignee), Assignee.

(Business address of Assignee.)

Date

Dear Sir:

I beg to notify you that on the (date of assignment), (name of assignors) of (insert place), doing business under the name of (insert name), made a general assignment for the benefit of creditors to me.

I find upon the books of the firm that you are indebted to him in the sum of \$....., a statement of which is herein inclosed.

Will you kindly send me check for this amount in order that the estate may be closed as soon as possible.

Yours truly,

(Name of Assignee),

Assignee of (name of Assignor).

Office and P. O. address,

(Address of Assignee.)

Form of Letter to Be Sent to Banks in Which Assignor Has Account.

New York,, 190 .

The National Bank,
..... City.

Gentlemen:

I hereby notify you that Mr., doing business under the name of, having an account in your bank, made a general assignment, for the benefit of his creditors, dated, 190., and filed and recorded this day to me, and that funds are to be paid out upon my order only.

Yours truly,

(Signed).....

As assignee of.....for the benefit
of the Creditors.

VIII.

GUIDE FOR GENERAL ASSIGNEE FOR THE BENEFIT OF CREDITORS.

The following to be typewritten and filled in and checked off in each case.

<i>Name.</i>	<i>Residence.</i>
Name of assignors.	
Name under which assignors did business.	
Principal place of business at date of assignment.	
Name of assignee.	
Residence.	
Business address of assignee.	
Business of assignors.	
Business of assignee.	
Date of assignment.	
Date of acknowledgment.	
Corporation, individual, or co-partnership.	
With or without preferences.	
Recorded in City and County of New York on the	
day of, 190..	
Also recorded in the County of....., on	
the.....day of....., 190.., be-	
cause of real estate owned by assignors in such county.	
Preferences in assignment.	
Schedules and inventory filed by..... on the	
day of, 190..	
Total:	Direct.
Liabilities of assignor, \$.....	Contingent.
Nominal assets, \$.....	
Actual assets, \$.....	
Bond ordered by Judge for \$..... on	
the day of, 190..	
Bond of Company of,	
presented and approved by Judge..... and filed	
in the office of the Clerk of the City and County of New York on	
the day of, 190..	
Petition for order to advertise for creditors.....	
verified....., 190..	

 Record Of Proceedings.

Order, dated, 190., made by Hon.
, Judge of the N. Y. Supreme Court.

Papers designated, and:

For what period of time.

First publication commenced.

Publication ends.

Last day to present claims.

Obtain copies of advertisement.

Obtain affidavit of names of creditors appearing upon books of
 assignor.

Last day to mail printed notices to creditors (which date is
 thirty days before last day to present claim).

Notices to present claims mailed to each of the creditors whose
 names appear on the books of assignors by
 date, 190..

Affidavit of mailing made by

Sworn to, 190..

Notices returned.

Obtain proof of publication of advertisement to present claims.

Sworn to.190., by.

Received proof of claims duly verified, showing name, address,
 amount due, and when due and what for.

Make up account and petition for citation.

Account and petition filed., 190..

Date—Account verified., 190..

Date—Petition verified., 190..

Summary of account.

Dr.

Inventory of stock.

Inventory of accounts.

Increased by.

Cr.

Decrease.

Expenses.

Dividend paid to

Balance

Order for citation made by Hon., on the
 day of, 190..

Record Of Proceedings.

Papers designated.

Citation issued, 190..

Date returnable., 190..

Serve citation upon:

Assignor.

Assignee.

Sureties.

Creditors.

Mailed citation, 190..

Draw proof of mailing.

Affidavit of service. by
dated., 190..

Obtain proof of publication of citation.
by dated, 190..

Who appeared upon return of citation.

.
.
.

Were objections filed to account?

If so, by what parties?

Order of reference by Judge.

Date, 190..

Name of referee.

Address of referee.

Hearing set for., 190..

Notice served on assignor, assignee, sureties, and.

Who appeared at reference (with name and address of counsel).

Amount realized from sales, \$.

Amount realized from collections, \$.

Amount paid out of expenses, \$.

Amount paid wages (preferred), \$.

IX.

LETTER TO RECEIVER IN BANKRUPTCY.

(*New York, Dec. 15, 1906.*)

Dear Sir:

We desire to advise you that you were appointed temporary receiver of the estate and property of (*Samuel Drummond*), of (*the Borough of Manhattan, City of New York*), on the (9th) day of (*December, 1906*) by Hon. (*George C. Holt*), Judge of the District Court of the United States for the Southern District of New York. As you are now to actually enter upon the discharge of your duties as such receiver, we desire to inform you in a general way as to your duties and make some suggestions to you in your representative capacity.

You should first obtain several certified copies of the appointing order to be filed with banks, post office, and left with keeper in charge of premises. Examine order as to conditions and restraining clauses, procure a bond and qualify as receiver. In addition to giving attention to these matters, you should:

1. Arrange to be represented by attorney. By Rule 34 receivers in bankruptcy in the southern district of New York are directed not to retain as their attorney or counsel the attorney or counsel of the bankrupt, of the petitioning creditor, of the person applying for the appointment of a receiver or of any creditor, unless a special order authorizing such retainer is obtained. This order is usually granted.
2. Arrange with a surety company for receiver's bond. Have your attorney send same to United States District Court for approval. See that bond of petitioning creditors is filed, if same is necessary, and do not file receiver's bond until creditor's bond has been filed unless immediate action is necessary.
3. Have your attorney obtain forthwith an order for the examination of the bankrupt, bookkeeper, and such other persons as might know about the affairs of the bankrupt, under and pursuant to section 21 of the Bankruptcy Act, and examine said parties forthwith as to all the property and property rights of the bankrupt. If there is any property

Instructions To Receiver.

in the hands of the sheriff, or any official, belonging to the bankrupt, which may have been seized on execution, or a replevin, get injunction restraining the said official from disposing of same, or interfering with same, pending the election and qualification of a trustee in bankruptcy. Then the trustee can obtain possession of such property by summary order; otherwise, a suit would be necessary, and the property lost. Obtain similar injunctions against any person, or parties, having property which the estate may be entitled to, or may have an interest therein.

Find out all details relative to mortgages against the bankrupt's property, and have your attorney get injunctions from the United States Court restraining any foreclosure proceedings pending the election and qualification of a trustee.

4. Go to bankrupt's premises with your attorney or his representative, and with an assistant, who can remain in charge, if necessary, and take immediate and actual possession of all the property found therein.
5. Reduce to possession, as far as possible, all property, tangible and intangible; to do this you should take actual and immediate possession of such property, and if it is under lock and key, secure the key.
6. Take possession of all money, valuables, books of account, check-books, bank-books, return vouchers, and all papers which may in any way tend to disclose the bankrupt's financial condition or the condition of his business and at the earliest possible moment make a memorandum or inventory of all articles in the premises and particularly those of a special value, including the details of all books of account found. It is often advisable to have bankrupt's books examined by an expert accountant.
7. Obtain all keys to premises, have safe opened and change combination if its contents are of value. Change lock on premises, unless you are positive there are no duplicate keys out.
8. If the size of the premises and the value of the stock warrant, put a keeper in possession at once, and if specially valuable, arrange for night watchman, or with a protective company for same purpose. See that certified copy of appointment order is on the premises at all times.

Instructions To Receiver.

9. It is the duty of the bankrupt to give you all information relative to his affairs. Have an interview with him for that purpose with your attorney, and demand from him all keys, books, leases, contracts, insurance policies, documents and papers of any value, combination to safe, etc., and consult with him as to condition of business generally and any matters that need immediate attention. Give him a receipt and keep a duplicate.
10. Examine insurance policies, have bankrupt transfer his interest in same to receiver and have the bankrupt or the broker who placed the insurance transfer the interest of bankrupt to receiver. Some companies consider that a transfer to the receiver is affected by operation of law, and that no transfer is necessary. If he will not do so, take out new insurance at once and have insurance run to bankrupt and receiver as their interests may appear.
11. Post notice in a conspicuous place, of the receiver's appointment and his possession, his address, and that of his attorneys.
12. Make list of employees; positions; how long employed, and place of residence.
13. Arrange with owner of premises for amicable occupation, if possible, by receiver, so long as it is desired to occupy premises. The receiver is entitled to a reasonable time to dispose of the property, paying for the use and occupation during the time so occupied, and the landlord may be restrained from interfering with such occupancy.
14. Have your attorney prepare several certified copies of appointing order.
15. Notify banks, trust and safe deposit companies of your appointment by serving upon them certified copies of the order appointing you temporary receiver.
16. Notify superintendent of general delivery at post office to deliver bankrupt's mail to receiver, sending him certified copy of appointing order with written request.
17. Notify banks in which bankrupt had account, and serve them with a certified copy of appointing order. Have bank book balanced and draw check on bank for balance.
18. Notify telephone, gas, and electric light companies, etc., of receivership, and arrange with them if you wish service continued.

Instructions To Receiver.

19. Keep a detailed record of whatever you do relating to the estate, which will show all moneys received and paid out, letters written, acts done, and a summary of any important conversations. In general, confine your acts to getting possession of the property and assets of the bankrupt estate, and take no part in controversies between the various creditors, save as the same may tend to uncover further property. If proofs of claim are filed with you, you should return them or forward them to the referee.
20. If bankrupt removed goods prior to bankruptcy, inquire of employees or neighbors for any facts which may subsequently be of value, should you wish to locate same.
21. Give notice of the receivership by letter, and personally if the matter is of sufficient importance, to all debtors on bankrupt's books, etc., and demand payment, and make utmost effort to collect. If immediate suit is necessary, apply to court promptly for authority.
22. If receiver is to continue business, examine into salary list and expenses, including rent, and expected income.
23. Make general and complete inventory of stock and fixtures.
24. Open a receiver's account with one of the authorized trust companies and see that interest is allowed on account.
25. If stock is perishable receiver should sell at once at the best price he can get. If season is such that an early sale is best for the estate, apply to the court for appointment of appraisers, and permission to sell; if otherwise, leave such matters to the trustee to be subsequently elected. Appraisers should know of cost of goods; how same will sell at public auction; and at least one of them is usually nominated by the court.
26. You should have bankrupt's assets appraised following closely the courses here outlined.
 - (a) Have order for appraisal and sale in one order.
 - (b) Notify appraisers designated and arrange date and notify bankrupt to be present and aid in the appraisal.
 - (c) Have appraiser's oath and statement prepared and a typewritten copy of your inventory.
 - (d) Have appraisers take oath, make appraisal, and statement signed by all. It need not be sworn to but must be filed.

Instructions To Receiver.

A sale on the bankrupt's place of business will usually give the best results.

The value of the lease of the bankrupt's premises must be investigated. It is frequently the only asset of value.

Be present in person at the sale.

27. In arranging for sale the following method will be found convenient.

(a) Note first what the order requires to be sold.

(b) Arrange with auctioneer for time and place of sale, removal of goods if sale not to be had at bankrupt's place of business and time for cataloguing.

There is a United States official auctioneer, who is the only one authorized under the rules of the Southern District of New York, to sell the property of bankrupts at auction. Each district makes its own rules relative thereto.

(c) Arrange for advertising sale, securing enough notices to send to all creditors and people in same trade as bankrupt.

The notice must be sent out at least five days before day of sale and must be published on day of sale.

Mail the notice of sale to all creditors, to the appraisers, the bankrupt, the attorneys for the petitioning creditors.

In the Southern District of New York, Rule 27 to 33 of the Bankruptcy Rules, S. D. N. Y., should be consulted and closely followed.

(d) File appraisalment before the sale.

28. If conditions warrant a temporary continuation of the business, apply to the court for that power, unless the order already so authorizes, and compromise and adjust no claims and give no releases or acquittances unless on application to the court.

29. On vacating premises, which should be done as soon as possible in order to keep down expenses, see that the keys and premises are properly surrendered to landlord or his agents.

30. Have your attorney attend to all legal matters, such as petitions, orders, dispossession, reclamation proceedings, etc., and

Letter To Vendor Of Real Property.

- have certified copies made of such important orders, etc., as may be necessary. There is no charge by the clerk of court for such certification for receiver.
31. Attend the examination of the bankrupt and other witnesses before the commissioner or referee as you may thereby discover assets and obtain valuable information.
 32. Attend first meeting of creditors before referee as creditors may wish information that you, as receiver, possess.
 33. File your account as receiver and petition for allowance with the clerk of the court promptly after the election of a trustee, and turn over all assets and property to trustee as soon as your accounts are passed upon and the order discharging receiver entered.
 34. Have your bank book balanced after all payments as a final check on the estate.
 35. See that your bond is cancelled and a letter noting that fact is sent to you by the surety company on your bond.
 36. Bear in mind in the performance of your duties that a bankrupt is a person against whom a petition is filed even though not adjudicated.

X.**LETTER TO VENDOR OF REAL PROPERTY.**

Dear Sir:

Please call at this office on the.....day of....., 1905, for the purpose of signing your contract of sale of property No.street, and kindly bring with you the following:

Deed of premises to you.

Policy of title insurance.

Policies of fire insurance.

Tax and water bills (receipted).

Receipted fire insurance premium bills.

Abstract of title.

Survey.

Receipts for interest on mortgage, and all other papers which you have concerning this property or this transaction.

See pages 7, 12.

XI.

LETTER TO SURVIVING PARTNER.

June 2, 1904.

Dear Sir:

In accordance with your request that we advise you concerning your rights and obligations in consequence of the death of your partner, Mr., we desire to state as follows:

The partnership was dissolved and ceased to exist on the day of your partner's death, and you should not do any more business, nor make any new contracts for the old firm, except such as are absolutely necessary to wind up its business.

It is your duty to close up the affairs of the firm, collect the assets as speedily and with as little loss as possible, complete the outstanding contracts, ascertain the debts and pay the same out of the personalty of the firm.

In regard to the real estate owned by the partnership, the title to one undivided half of it is in you, the title to the one undivided other half of it descends to the heirs-at-law of your late partner, if he has not disposed of the same by will, or to his devisees, if he has disposed of it by will, subject, however, to be taken by order of a court of equity to pay partnership debts, in case there is an insufficiency of personalty for that purpose; your late partner's widow is entitled to dower in his one undivided half of the real estate, subject however, as above, to the right of a court of equity to take the real estate so far as it may be necessary, for the payment of partnership debts.

Although the courts say you can use the realty so far as it may be necessary for the payment of debts, it would be unwise for you to make a contract to sell any of the firm real estate without having it done through a receiver or a judgment of a court of equity, since you might make a contract in your own name, and if you did not succeed in having the devisees or heirs join, you would then be subject to such expense and annoyance as might follow a rejection of the title.

As to the personal property of the firm, you, as the surviving partner, become vested with the legal title and are entitled to the sole and exclusive possession of the same, and neither the executor, administrator or the personal representatives of your deceased partner have any right to interfere with your possession or legal ownership, provided, however, that you use the partnership assets,

Advice To Surviving Partner.

which have thus come to you, for the payment of the partnership debts, and all of it, if necessary; should all of it be not required, then the balance that may remain in your hands belongs equally to you and to the personal representative of the deceased, or to those to whom he may have bequeathed it by will, but it is not until after the debts have been ascertained and paid, and the accounts balanced, that the personal representative of the deceased have any rights in the personalty.

In disposing of the personal property, it is your privilege to dispose of it in any way that you think is for the best interests of the estate; you can sell it at auction or at private sale, in fact, you could dispose of all the property by general assignment, for the benefit of creditors, if you found the firm insolvent, and so far as the State laws are concerned, you could even prefer one creditor over another, and the representatives of the deceased partner would have no right to interfere in the matter, so long as you were applying the assets of the partnership to partnership debts, even in your own way.

In regard to the outstanding contracts, as a general rule (and unless there are some extraordinary circumstances which you have not mentioned to me), it is your duty not to sell these partially performed contracts, but to proceed to perform them and receive whatever profit can be made out of the same, and then to divide the profits equally between yourself and the representative of the deceased.

You are not entitled to any compensation for so doing, and although this may seem to you inequitable, if you had predeceased your partner, he would have had to do the same.

In regard to such contracts as hiring, or for services, as exist between the employees of the firm and yourself, these were terminated by the dissolution of the partnership, which occurred upon the death of your partner, and it would be wise to make new arrangements at once with such of the employees of the old concern as you desire to retain in your employ. Business expediency may dictate that you do not bring this matter to their attention at the present time.

You should at once notify all persons with whom you have insurance of the death of your deceased partner.

Your lease is not terminated by the death of your partner, and you will be obliged to look out for this obligation. If it is more valuable than when the lease was made, you can dispose of it as an asset; on the other hand, if it is not as valuable as when made,

Advice To Surviving Partner.

which I understand to be the fact, you should try and make arrangements with the landlord either for a surrender or cancellation.

In regard to the name of the old partnership, the firm name remains with you, as survivor, subject, of course, to any qualifications of this principle in the articles of co-partnership, and subject, also, to the restrictions imposed by the statute on the use of firm names representing persons not partners; in other words, you have the right to continue the use of the name by complying with statute of the State, to wit, filing of proper papers drawn and executed under the advice of counsel. The books and evidences of debt remain with you, as surviving partner. * * *

It should be borne in mind that in winding up a firm's affairs, and distributing the assets, the value of its good will is almost entirely destroyed; moreover, unless the business is continued without interruption, the earning capacity of the firm as a going concern is destroyed; both of these things are often of considerable value.

We would suggest, in order to preserve them, that you consider the advisability of buying out the interest of your deceased partner; for that purpose, you should have the representatives of his estate assist you in determining the value of the assets, *i. e.*, stock, outstanding contracts, etc., and also have the liabilities of the firm ascertained; an appraisalment should then be made of the value of the interest of the deceased partner, and upon this basis you can purchase his interest.

Of course, the appraised valuation will determine very largely what price you should offer; at the same time, there is nothing to prevent the estate of your deceased partner from refusing your offer, should they deem it insufficient.

If this plan is followed, you would keep the firm going, take new business, and avoid the very serious loss that always occurs when a partnership is wound up.

In the event of the failure of the representatives of your deceased partner and yourself agreeing upon terms, or if you are desirous that the business be continued with them in it, we would suggest for your consideration the formation of a stock company to continue it.

These instructions are of the most general character, and if further information concerning your particular estate is desired, we should be pleased to advise you.

Yours truly,

.....

XII.

LETTER TO WIDOW AS TO HER RIGHTS IN HUSBAND'S PROPERTY.

New York, January 5, 1906.

Dear Madam :

Replying to your inquiry as to your rights in your husband's property, he having died leaving no will, we beg to advise you in a general way as follows :

Your only interest in your husband's real estate is a dower right; that is, you have the right during your life to use or to receive the income from one-third of his real estate. The property itself will be divided equally among his children subject to your right of dower.

The personal property, after the payment of your husband's debts and the expenses of the administration of the estate, will go to yourself and his children; you receiving one-third, and the remaining two-thirds being equally divided among the children.

You have a prior right to appointment as administratrix of your husband's estate, and should apply for such letters promptly. As administratrix it will be your duty to take possession of all your husband's personal property and proceed to convert same into money, and apply it to the payment of your husband's debts. You should notify any insurance companies or associations in which your husband was insured, of his death, using for that purpose the blank form which they will furnish you on application.

We will give you more detailed information as to your rights and duties as administratrix, in the near future.

Yours very truly,

.....

XIII.

LETTER TO WIDOWER AS TO HIS RIGHTS IN PROPERTY OF DECEASED WIFE.

New York, January 5, 1906.

Dear Sir:

Replying to your inquiry as to your rights in your wife's property, she having died leaving no will, in a general way we would advise you as follows:

Your wife's real property will be equally divided among her children, subject, however, to your right of curtesy. Since there are children born of this marriage, the law gives you the right to the use of all your wife's real property during your life (your curtesy), but you have no further interest in the real property.

The personal property, after the payment of the debts of your wife and the expenses of the administration of the estate, will go to yourself and her children, one-third to you and two-thirds to be equally divided among them.*

You have a prior right to letters of administration upon your wife's estate and should apply for such letters promptly. You should also notify any companies or associations in which your wife was insured, of her death, using for that purpose the blanks which they will furnish upon application. As soon as you are appointed administrator it will be your duty to take possession of all your wife's personal property and proceed to convert the same into money and apply it to the payment of her debts.

We will advise you more fully as to your rights and duties as administrator as soon as you are appointed.

Yours very truly,

.....

* If no children husband takes all the personal property.

XIV.

NOTICE TO BE GIVEN BY MORTGAGOR, (WHO HAS PARTED WITH TITLE), TO OWNER OF MORTGAGE, TO FORECLOSE.

Date, (*October 4, 1907.*)

To (*Franklin Irwin,*) Mortgagee,

(or holder of mortgage on premises No. 371 *West 70th Street, N. Y. City.*)

Please take notice that the principal of the bond and mortgage covering premises (*give description or street number*) made by the undersigned and dated (*March 3, 1903*) has become due, and that unless you proceed forthwith, to collect the same either from the present owner of the said property, or out of the said premises covered by said mortgage, by foreclosure and sale of said premises, the undersigned, the maker of said bond and mortgage will not be liable for any deficiency which may hereafter arise by reason of your delay, in proceeding to realize upon such security at the present time, in accordance with the provisions of said bond and mortgage.

(JAMES F. THOMSON,)

(See *Gottschalk v. Jungmann*, 78 *App. Div.* 171.)

PART IV.

CHECKS ON CLOSING OF TITLE.

I.

MEMORANDUM FOR CLOSING

•

When Acting for Vendor

Have abstract of title and policy of title insurance.

Is vendor a citizen, of full age and competent?

Have deed, and compare description, which should be same as last deed, unless change has taken place in street name or line.

(Full consideration should be expressed in deed by person conveying in representative capacity.)

Have special clauses provided for in contract of sale been inserted in the deed?

If mortgages on premises, is deed to read "subject to mortgages" or are the mortgages to be "assumed by" purchaser in the deed?

Signature of vendor and vendor's wife, acknowledgment of vendor and vendor's wife and deed sealed.

Has notary signed in Register office?

Is vendor's wife of full age and competent?

If vendor, a corporation, have certified copy of resolution and certificate of officers.

If deed executed outside of the county have county clerk's certificate.

Inquire whether vendor has married since signing contract of sale.

Ascertain whether any of the parties have been divorced.

HAVE THE FOLLOWING:

Tax, water and assessment bills with interest computed to day after closing and memorandum for apportionment.

Have water meter read as of day of closing.

Transcripts of judgments.

Vendor.

Assignments of judgments (if any to be drawn).

*Satisfaction of mortgages (if any to be drawn), and arrange to have bond and mortgage in readiness for closing.

Receipts for last payment of interest on mortgages.

Estoppel certificates from mortgagee, showing amount due, and date of last payment of interest or principal, properly executed for recording.

Memorandum for apportionment of interest on mortgages.

Subordination agreement if called for in contract.

If there are mechanics' liens, have satisfaction pieces for closing.

Consents and orders cancelling *lis pendens* (if any to be drawn).

Insurance policies and premium bills, fire, plate glass and indemnity, and memorandum for apportionment.

Receipt for insurance policies.

Authorization to agent to receive money if vendor not to receive money at closing.

Authorization to vendee to pay taxes, assessments, water bills, judgments and mechanic's and other liens (if any to be allowed on closing).

• • Assignment of awards (if any to be given).

List of rents paid and unpaid, and assignment of rents.

Receipt for last payment of rent and memorandum for apportionment of same. Inquire whether any rent has been paid to vendor in advance.

Letters to tenants to pay rent to vendee.

Affidavit of title as to ownership, citizenship, age, marriage identity of wife, judgments, etc.

Powers of attorney, if agent acts for vendor on closing, and proof that principal is alive and that power has not been revoked.

Bill of sale of household articles, if any to be drawn: Shovels, pulleys, tools, brooms, mops, pails, gas fixtures and globes, electric light bulbs, ash cans, keys. Furnishings: Carpets, shades, awnings, hat racks, grills, hall seats, window seats, mirrors, heating apparatus.

Contract of sale.

Last deed of premises.

You may need other old deeds and papers.

Bill for client for services.

Vendor.

THE FOLLOWING MATTERS MAY NEED ATTENTION:

- Are there any chattel mortgages on material or fixtures or any such purchased by conditional sale?
- Examine leases and assignments of leases, and ask if any deposits have been made by tenants or security for rent given.
- Inquire whether there are any restrictions in the title.
- Inquire who is in possession, nature and extent of his tenancy; any open and notorious easements; are there any overhanging eaves or shutters?
- Any beams of adjoining property in walls, or *vice versa*.
- Any foundation extensions, easements, party wall agreements, sewer and drain rights. Unsafe building liens.
- Agreements for power from adjoining premises.
- Have tenement-house, fire, health, building and other department violations been removed?
- Look into vault space permits.
- Look out for survey variations.
- How old is building, and compare date with survey?
- For what purposes premises are used. (Civil Damage Act; U. S. Distillery Laws, etc.)
- If partially constructed building on premises see that union workmen and members of Allied Building Trades Association have been paid.
- Inquire as to age of children of previous owners to see if any born after making of will.
- Inquire as to posthumous children.
- Inquire if property acquired from a deceased person within three years; if so, have all debts of deceased been paid?
- Have collateral inheritance taxes been paid?
- Inquire if there are any proposed widenings of streets.
- Has any change taken place in street lines or names?
- Has any change in condemnation or assessments situation taken place since the making of the contract?
- Provide for adjustment of rights against abutting railroad, elevated, subway, or surface.
- Arrange for agreements with telephone, telegraph companies, and leases for sign boards.
- Adjust charge and liability for electric light, gas, steam and power service, and deposits for same.

Vendor.

Give attention to the following items: Wages of janitor, elevator operator, hall boys, and other employees.

Don't forget charge for recording deeds, satisfaction pieces, releases, and any other papers (satisfaction pieces, \$2.50 each), and collect for drawing purchase-money mortgage and recording same.

Look out for mortgage recording tax.

Remember it is dangerous to take check (even when certified) with indorsements of third parties thereon.

.. Inquire who is to pay brokerage and amount.

If purchase-money mortgage to be taken back, see that release clause is favorable to mortgagee. See memorandum as to mortgages, page 9.

Taxes in New York city become a lien on first Monday of October. Section 914 Greater New York Charter.

MEMORANDUM FOR CLOSING

II.

When Acting for Vendee.

Abstract showing clear title, or policy of title insurance. Examine and approve deed, full covenant and warranty. Compare description, which should convey as much as owner has and not less than that called for by contract. Same description as in last deed usually preferred unless there has been change in street names and lines.

Full consideration should be expressed in deed by person conveying in representative capacity.

Are the special clauses provided for in contract of sale in the deed?

If mortgages on premises, does deed read "subject to them," or does vendee "assume" same?

Is vendor a citizen of full age and competent?

Signature of vendor and vendor's wife.

Is vendor's wife of full age and competent?

Acknowledgment by parties.

Has notary signed in Register's office?

Is deed sealed?

If vendor a corporation, obtain certified copy of resolution and certificate of officers.

If deed executed outside of county, see that county clerk's certificate is attached.

Has vendor married since signing of contract of sale?

Have any of the parties been divorced?

Be careful taking a deed to vendee "as trustee."

OBTAIN OR CHECK THE FOLLOWING

Tax, water and assessment bills with interest computed to day after closing and memorandum for apportionment.

Has water meter been read as of day of closing?

List of judgments unsatisfied and transcripts of same.

Assignments of judgments (if any to be delivered).

Satisfactions of judgments (if any to be delivered).

List of mortgages unsatisfied.

Vendee.

Assignments of mortgages (if any to be delivered).

* Satisfaction of mortgages, and obtain bond and mortgages in hand before closing.

Receipts for last payment of interest on mortgages.

Estoppel certificates from mortgagees, showing amount due and date of last payment of interest or principal, properly executed for recording.

Subordination agreement if called for in contract.

Memorandum for apportionment of interest on mortgages.

Satisfaction pieces of mechanics' liens (if any to be delivered).

Consents and orders cancelling *lis pendens* (if any to be delivered).

Obtain insurance policies and premium bills, fire, plate glass and indemnity and memorandum for apportionment.

Give receipt for insurance policies.

Get details to have policies changed at once.

Obtain authorization to receive money if vendee not present at closing.

Retain sufficient funds to pay unpaid taxes, assessments, water rates, judgments, mechanics' liens, and other charges to be allowed.

Obtain authorization to pay taxes, assessments, water rates, judgments and mechanics' and other liens.

Obtain assignment of awards (if any to be delivered).

List of rents paid and unpaid and assignment of rents unpaid, and if any deposits or security held by vendor obtain same.

Receipt for last payment of rent and memorandum for apportionment of rents. Inquire whether any rent has been paid to vendor in advance.

Obtain letters to tenants to pay rent to vendee.

Affidavit of title as to ownership, citizenship, age, marriage, identity of wife, judgments, etc.

If agent acts for vendor, get power of attorney properly executed for recording and proof that vendor is alive, and that power has not been revoked.

Get bill of sale of household articles (if any to be delivered): Shovels, pulleys, tools, brooms, mops, pails, gas fixtures and globes, electric light bulbs, ash cans, keys. Furnishings: Carpets, shades, awnings, hat racks, grills, hall seats, mirrors, heating apparatus.

Vendee.

- Have contract of sale.
- Obtain last deed to premises and old deeds.
- See that there are no chattel mortgages on materials or fixtures, or any materials in premises purchased on conditional sale.
- Examine leases and assignments of leases.
- Inspect premises and inquire who is in possession, nature and extent of tenancy, and whether person in possession claims any easements.
- Any open or notorious easements; are there any overhanging eaves or shutters.
- Look out for beams of adjoining property in walls or *vice versa*.
- Foundation extension, easements and party-wall agreements, sewer and drain rights. Unsafe building liens. Power agreements.
- Have tenement-house, fire, health, building, and other department violations been removed?
- Look into vault space permits.
- Look out for survey variations.
- How old is building and compare date with survey; any building erected since survey made?
- For what purpose are premises used? (Civil Damage Act; U. S. Distillery Laws, etc.)
- If partially constructed building on premises, see that union workmen have been paid; also Allied Building Trades Association workmen have been paid.
- If property acquired through will, inquire as to age of children of previous owners to see if any born after making of will.
- Inquire as to posthumous children.
- Inquire if property acquired from a deceased person within three years; if so, have all his debts been paid?
- Has collateral inheritance tax been paid?
- Inquire if there are any proposed widenings of streets.
- Has any change taken place in street lines or names?
- Any change taken place in condemnation or assessment situation?
- Provide for adjustment of rights against abutting railroads, surface, elevated or subway.
- Arrange for agreements with telephone, telegraph companies and leases of sign boards (if any).

Vendee.

Adjust charge and liability for electric light, gas, steam and power service, and arrange as to deposits with such companies.

Give attention to the following items: Wages of janitor, elevator operators, hall boys, and other employees.

Don't forget charge for recording deeds, satisfaction pieces, releases, and any other papers. (Satisfaction pieces, \$2.50 each.)

Look out for mortgage tax.

Who is to pay brokerage and amount?

If purchase-money mortgage to be given back, see memorandum as to mortgages, page 9.

Have certified check to order of self, and if vendor not present obtain authorization of agent to receive money.

Bill for searching and services.

Taxes in New York city become a lien on first Monday of October. (Section 914 Greater New York Charter.)

AFTER CLOSING:

Record papers.

Have insurance policies changed at once.

Notify tenants of change of ownership and that rent is to be paid to vendee.

Notify mortgagees.

MEMORANDUM FOR CLOSING

III.

When Acting for Mortgagor.

Have bond.

Have mortgage executed by mortgagor and wife; acknowledged and sealed by mortgagor and wife.

Has notary signed in Register's office?

Are mortgagor and wife citizens and full age and competent?

If executed outside of the county have county clerk's certificate attached.

Compare description: Should be same as last deed unless change has taken place in street, name or line.

If mortgagor, a corporation, have certified copy of resolution and certificate of officers.

Inquire whether mortgagor has married recently.

Ascertain whether any of the parties have been divorced.

Have special clauses been inserted, *e. g.*: Is default clause to be on demand, sixty days or ninety days; gold clause; payment of future tax; receiver clause; allowing part payments; allowing payments before maturity; releasing clause; violation clause; provisions as to indorsements on bond and production of same when payments made; making second mortgage due upon default in any payment of interest for ten days on any prior mortgage; making interest, taxes, assessments or other charges paid by mortgagees upon mortgagor's default, part of the principal secured by the mortgage; subordination clause.

If mortgagor desires to sell off portion of mortgaged premises see that mortgage contains clause enabling mortgagor to sell lots from time to time by payment of a proportionate part of the lien of the mortgage on each block, lot or parcel generally one-third more than the lien of the mortgage, and provide who shall pay for the release and amount thereof.

Is this a purchase-money mortgage?

Submit bond and mortgage to attorney for mortgagee and have same approved.

Mortgagor.

HAVE THE FOLLOWING:

- Deed to mortgagor.
- Tax, water and assessment bills with interest computed to day after closing.
- Have water meter read as of day of closing.
- Transcripts of judgments against mortgagor.
- Assignments of judgments, if any to be drawn.
- Satisfaction pieces of judgments, if any to be drawn.
- List of mortgages.
- Assignments of mortgages, if any to be drawn.
- * Satisfaction of mortgages, if any to be drawn, and arrange to have the bonds and mortgages satisfied at the closing.
- Receipts for last payment of interest on prior mortgages.
- Estoppel certificates from mortgages showing amount due and date of last payment of interest or principal properly executed for recording.
- Subordination agreement, if any to be drawn.
- Satisfaction pieces of mechanics' liens, if any.
- Consents and order cancelling *lis pendens*, if any to be drawn.
- Insurance policies and premium bills.
- Receipt for insurance policies.
- Details so that mortgagee can have bills changed at once.
- Authorization of agent of mortgagor to receive money, if mortgagor not to be at closing.
- Authorization to mortgagee to pay taxes, assessments, water bills, judgments and mechanic and other liens, if they are to be reserved on closing.
- Assignment of awards, if any to be given.
- List of rents paid and unpaid.
- Inquire whether any rent has been paid to mortgagor in advance.
- Affidavit of title as to ownership, citizenship, age, marriage, identity of wife, judgments, etc.
- Power of attorney, if agent to act for mortgagor on closing, and proof that principal is alive and that power has not been revoked.
- Bill for client for services.

THE FOLLOWING MATTERS MAY NEED ATTENTION:

- Are there any chattel mortgages and material or fixtures, or any such purchased by conditional sale?

* See note, page 873.

Mortgagor.

Examine leases and assignments of leases, and clauses subordinating them to future mortgages, if any.

Inquire whether there are any restrictions in the title.

Inquire who is in possession, nature and extent of his tenancy.

Are there any open or notorious easements?

Are there any overhanging eaves or shutters?

Are there any beams of adjoining property in walls or *vice versa*?

Any foundation extensions, easements, party wall agreements, sewer or drain rights, unsafe building liens, agreements for power from adjoining premises?

Have tenement-house, fire, health, building and other department violations been removed?

Look into vault space permits.

Look out for survey variations.

How old is building? Compare date with survey.

For what purpose premises used? (Civil Damage Act; U. S. Distillery Laws, etc.)

Have any new buildings been erected since survey?

If any partially constructed building, see that union workmen have been paid; also members of the Allied Building Trades Associations.

Has any change taken place in street lines or names?

Any proposed widenings of streets?

Has any change in condemnation or assessment situation taken place since the beginning of negotiations?

Is any security other than bond to be given?

Inquire as to age of children of previous owners to see if any born after making of will of such owner.

Look out for posthumous children.

Inquire if property obtained from a deceased person within three years; if so, have all debts of the deceased been paid?

Has collateral inheritance tax been paid?

Don't forget charge for recording mortgages, satisfaction pieces, releases and other papers. (Satisfaction pieces, \$2.50 each.)

Look out for mortgage recording tax.

Remember it is dangerous to take check, even when certified, with indorsements of third parties thereon.

Who is to pay brokerage and amount?

Mortgagor.

Taxes in New York city become a lien on the first Monday of October. Section 914 Greater New York Charter.

It is not wise to pay off any part of principal of a bond without having a receipt indorsed on the bond itself. Sometimes by the terms of the bond such indorsements must be made and the borrower is entitled to require a production of the bond and to see the indorsements made.

MORTGAGOR RECEIVES:

Check or money.

Receipt for money retained.

Receipt for insurance policies and other papers delivered.

MEMORANDUM FOR CLOSING

IV.

When Acting for Mortgagee.

- Abstract showing clear title or policy of title insurance.
- Approve bond and mortgage.
- Signature and acknowledgment of mortgagor and wife.
- Has notary signed in Register's office?
- Are mortgagor and wife citizens of full age and competent?
- Bond and mortgage sealed.
- If executed outside of the county, have county clerk's certificate attached.
- Compare description: Should be same as last deed unless change has taken place in street, name or line.
- If mortgagor, a corporation, have certified copy of resolution and certificate of officers.
- Has mortgagor married recently?
- Have any of the parties been divorced?
- Have special clauses been inserted, *e. g.*: Is default clause to be, on demand, sixty days or ninety days; gold clause; payment of future tax; receiver clause; allowing part payments; allowing payments before maturity; releasing clause; violation clause; provisions as to indorsements on bond and production of same upon payments made; making second mortgage due upon default in any payment of interest for ten days on any prior mortgage; making interest, taxes, assessments or other charges paid by mortgagee upon mortgagor's default, part of the principal secured by the mortgage; subordination clause; if release clause, see that it is favorable to mortgagee and provide who shall pay for drawing release and amount and terms, etc.
- Is this a purchase-money mortgage?

CHECK OR RECEIVE THE FOLLOWING:

- Deed to mortgagor.
- Tax, water and assessment bills with interest computed to day after closing.
- Have water meter read as of day of closing.

Mortgagee.

Transcripts of judgments against mortgagor.
Assignments of judgments, if any to be delivered.
Satisfaction pieces of judgments, if any to be delivered.
List of mortgages.
Assignment of mortgages, if any to be delivered.
*Satisfaction of mortgages, if any to be delivered, and have the bond and mortgage in hand before closing.
Receipts for last payment of interest on prior mortgages.
Estoppel certificates of mortgagees showing amount due and date of last payment of interest or principal properly executed for recording.
Subordination agreement, if any to be delivered.
Satisfaction pieces of mechanics' liens, if any to be delivered.
Consents and orders cancelling *lis pendens*, if any to be delivered.
Insurance policies and premium bills.
Receipt for insurance policies.
Details so that mortgagee can have policies changed at once.
Authorization of agent of mortgagor to receive money, if mortgagor not to be at closing.
Retain amount to cover unpaid taxes, assessments, water bills, judgments, mechanics' and other liens and charges to be reserved on closing.
Authorization to mortgagee to pay taxes, assessments, water bills, judgments and mechanic and other liens, if they are to be reserved on closing.
Assignment of awards, if any to be delivered.
List of rents paid and unpaid.
Inquire whether any rent has been paid to mortgagor in advance.
Affidavit of title as to ownership, citizenship, age, marriage, identity of wife, judgments, etc.
Examine powers of attorney, if agent to act for mortgagor on closing and proof that principal is alive, and that power has not been revoked.

THE FOLLOWING MATTERS MAY NEED ATTENTION.

Are there any chattel mortgages on material or fixtures or any such purchased by conditional sale?

Examine leases and assignment of leases and clauses subordinating them to future mortgages, if any.

* See note, page 873.

Mortgagee.

Are there any restrictions in the title?

Inspect premises and inquire who is in possession, nature and extent of his tenancy, and if party in possession claims any easements.

Are there any open or notorious easements?

Are there any overhanging eaves or shutters?

Are there any beams of adjoining property in walls or *vice versa*?

Any foundation extensions, easements, party wall agreements, sewer or drain rights, unsafe building liens, agreements for power from adjoining premises?

Have tenement house, fire, health, building and other department violations been removed?

Look into vault space permits.

Look out for survey variations.

How old is building, and compare date with survey.

For what purpose premises are used. (Civil Damage Act, U. S. Distillery Laws, etc.)

Have any new buildings been erected since survey?

If any partially constructed building, see that union workmen have been paid; also members of the Allied Building Trades Associations.

Has any change in condemnation or easements situation taken place since the beginning of negotiations?

Is any security other than bond to be given?

Inquire as to age of children of previous owners to see if any born after making of will of such owner.

Look out for posthumous children.

Inquire if property obtained from a deceased person within three years; if so have all debts of the deceased been paid?

Has collateral inheritance tax been paid?

Don't forget charge for recording mortgage, satisfaction pieces, releases and other papers. (Satisfaction pieces, \$2.50 each.)

Look out for mortgage recording tax.

Remember it is dangerous to take check (even when certified) with indorsements of third parties thereon.

Who is to pay brokerage and amount?

Taxes in New York city, become a lien on the first Monday of October. Section 914 Greater New York Charter.

Mortgagee.

It is not wise to pay off any part of principal of a bond without having a receipt indorsed on the bond itself.

Sometimes by the terms of the bond such indorsements must be made and the borrower is entitled to require a production of the bond and to see the indorsements made.

Have certified check payable to self.

Bill for mortgagor for searching.

AFTER CLOSING:

Record papers.

Have insurance policies changed at once.

Notify owner.

PART V.

COMMON PRACTICE FORMS.

ATTACHMENT.

FORM No. 1.

Warrant of Attachment.

THE PEOPLE OF THE STATE OF NEW YORK.

To the Sheriff of the County of (*New York*), Greeting:

WHEREAS, an application has been made to the judge granting this warrant by (*William Brown and George W. Davis*), plaintiffs, for a warrant of attachment against the property of (*John T. Taylor, Henry Johnson, and Charles W. Clark*), defendants, in an action in the (*City*) Court of (*the City of New York*), and it appearing by affidavit to the satisfaction of the judge granting this warrant that one of the causes of action specified in section 635 of the Code of Civil Procedure exists against the defendant to recover a sum of money only to wit: the sum of (*eight hundred and ninety-four* (\$894)) dollars as damages for breach of contract in (*the non-payment of the purchase price of goods sold and delivered*), and the affidavit showing that *the defendants have disposed of their property with intent to cheat and defraud their creditors*, and the plaintiffs having also given the undertaking required by law;

NOW YOU ARE HEREBY COMMANDED, to attach and safely keep so much of the property within your county which the defendants (*John T. Taylor, Henry Johnson, and Charles W. Clark*) have, or which they may have at any time before final judgment in the action, as will satisfy plaintiffs' demand of (*eight hundred and ninety-four* (\$894)) dollars, together with costs and expenses, and that you proceed hereon in the manner required of you by law.

Undertaking.

WITNESS*: Hon. (*Edward F. O'Dwyer, Chief*) Justice of the (*City*) Court (*of the City of New York*), at (*its court house, No. 32 Chambers street*) in (*the Borough of Manhattan*), city of (*New York*), this (*24th*) day of (*July*), in the year one thousand nine hundred and (*five*).

(*EDWARD F. O'DWYER*),
(*Chief Justice, City Court*
of the City of New York.)

(*VICTOR ROGERS*),
Plaintiffs' Attorney,
(*27 Pine*) street,
(*New York City*).

FORM No. 2.

Undertaking on Attachment.

NEW YORK SUPREME COURT,
(*New York*) County.

(*JOHN OLIVER and FRANKLIN OLIVER,*)

Plaintiffs,

against

(*LEONARD CALDWELL,*)

Defendant.

The above-named plaintiffs having applied to one of the justices of this court for a warrant of attachment against the property of the above-named defendant under and by virtue of the Code of Civil Procedure, we, (*John Lambert*), of No. (*418 Central Park West, in the Borough of Manhattan*), city of (*New York*), and (*Arthur Stevens*), of No. (*402 Washington avenue, in the borough of Brooklyn*), city of (*New York*), do hereby jointly and severally undertake that if the defendant recovers judgment in this action, or if the warrant of attachment is vacated, plaintiffs above named will pay all costs that may be awarded to the above-named defend-

* In the Supreme Court, First Judicial District usually attested in the name of the Justice sitting at Special Term, Part II.

Undertaking.

ant, and all damages which the said defendant may sustain by reason of the said attachment, not exceeding the sum of (*two hundred and fifty dollars*).

Dated (*July 1, 1905*.)

(*JOHN LAMBERT.*)

(*ARTHUR STEVENS.*)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*John Lambert*), being duly sworn, says: That he is a resident and a (*freeholder*) within the State of New York, and is worth double the sum specified in the above undertaking over and above all debts and liabilities which he owes or has incurred, exclusive of property exempt by law from levy and sale under an execution.

(*JOHN LAMBERT.*)

Sworn to before me this (*1st*)

day of (*July, 1905*).

(*JOHN JONES*),

Notary Public (*N. Y.*) County.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*ARTHUR STEVENS*), being sworn, says, that he is a resident and a (*householder*) within the State of New York, and worth double the sum specified in the above undertaking, over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

(*ARTHUR STEVENS.*)

Sworn to before me this (*1st*)

day of (*July, 1905*).

(*JOHN JONES*),

Notary Public (*N. Y.*) Co.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

I certify that on this (*first*) day of (*July, 1905*), before me personally appeared (*John Lambert and Arthur Stevens*) to me known and known to me to be the persons described in and who executed the foregoing undertaking, and severally duly acknowledged to me that they executed the same.

(*JOHN JONES*),

Notary Public,

(*New York*) County.

Affidavit.

NOTE.

AN AFFIDAVIT TO OBTAIN AN ATTACHMENT SHOULD SHOW IN SUBSTANCE:

1. That the cause of action is one of those specified in section 635 of the Code of Civil Procedure, arising out of the following facts: (here set forth *proof* of facts stated in complaint.)
2. If the action is to recover damages for breach of contract, that the plaintiff is entitled to recover the sum stated over and above all counterclaims known to him.
3. The ground of attachment.
4. That the action has been commenced, or the summons issued and a copy annexed, and that the warrant is asked for to accompany the summons.
5. That no previous application has been made.

Where cables, telegrams, letters, and other documents received are the grounds of deponent's belief, and the sources of his information, they should not only be referred to, but copies should be annexed to the papers, and a statement of deponent's possession and readiness to produce the original should be made. The mere averment of facts as upon personal knowledge is not sufficient unless circumstances are stated from which the inference can fairly be drawn that affiant has personal knowledge of the facts which he avers, and where it is assumed that he has not personal knowledge, as for example: Where he is assignee of a claim and does not disclose means of knowledge, the papers will be deemed insufficient; in other words, where the affiant, owing to his relations with the parties and to the cause of action, plainly speaks as an actor in the action, the courts usually accept his verified averment of facts, which may have come within his actual observation or personal action as satisfactory proof thereof; where, however, he does not speak as such a direct actor, but, *in fact*, speaks *apparently* as a stranger to the transaction, it matters not how positively, he asserts his personal knowledge of the facts averred, he must still furnish the evidence of such facts.

In stating conversations received over the telephone, he must show all the circumstances which prove that he knew the person speaking at the other end, as for example, that he called up that person, that he knew the voice of the person speaking, having often heard it before over the telephone, and any other fact which proves that he knew the person to whom he was talking.

Ground: Non-Resident Defendant.

FORM No. 3.

Affidavit to Obtain Attachment — Ground: Non-residence of Defendant.

NEW YORK SUPREME COURT.

County of (*New York*).

(HENRY CURTIN,)

Plaintiff,

against

(WILLIAM MORRIS,)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(HENRY CURTIN), being duly sworn, says, that he is the plaintiff in this action. That a cause of action exists in favor of plaintiff and against the above-named defendant for the recovery of a sum of money only, as damages for a breach of contract (express or implied) other than a contract to marry, and that said cause of action arose from and is based upon the following facts:

At the (*City of New York*), on or about the (1st) day of (*July*, 1907), plaintiff sold and delivered to defendant at defendant's special instance and request at prices agreed upon and on a credit of thirty days, certain goods, wares, and merchandise, to wit: 400 cases of wine, amounting, in the aggregate at such agreed prices, to the sum of twenty-five hundred dollars (\$2,500.00). That said term of credit has expired and said sum has not been paid nor any part thereof.

That the plaintiff in this action is entitled to recover from defendant, on said cause of action, said sum of (*twenty-five hundred*) dollars (\$2,500.00) with interest thereon from the (1st) day of (*July*, 1907), over and above all counterclaims known to plaintiff.

That defendant is not a resident of the State of New York, but resides in the (*City of Trenton*) in the State of (*New Jersey*), this fact having been communicated by defendant to deponent on (*August 1*, 1907).

That plaintiff has commenced this action to recover said sum of (*twenty-five hundred*) dollars (\$2,500) with interest as aforesaid

Ground: Defendant Foreign Corporation.

on the said cause of action, and the summons herein, a copy of which is hereto annexed, has been duly issued.

That no previous application has been made for a warrant of attachment herein.

Sworn to before me, this } (HENRY CURTIN.)
 (5th) day of (August, 1907). }
 (WILLIAM BLACK),
 Notary Public,
 (New York) County, (No. 17).

FORM No. 4.

Affidavit to Obtain Attachment — Ground: Defendant a Foreign Corporation.

NEW YORK SUPREME COURT.

County of (*New York*).

(HENRY CURTIN,)	}
Plaintiff,	
against	
(WILLIAM MORRIS COMPANY,)	
Defendant.	}

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(HENRY CURTIN,) being duly sworn, says:

That he is the plaintiff in the above action; that a cause of action exists in favor of the plaintiff and against the above-named defendant for the recovery of a sum of money only, as damages for a breach of express contract other than a contract to marry, and that said cause of action arose from and is based upon the following facts:

(*At the city of New York, between the 1st day of June, 1904, and the 15th day of July, 1904, the plaintiff sold and delivered to the defendant, at the special instance and request of the said defendant, and at prices agreed upon, goods, wares, and merchandise*

Ground: Defendant Foreign Corporation.

amounting in the aggregate, at such agreed prices, to the sum of three thousand (\$3,000) dollars, and the said sum has not been paid nor any part thereof;)

That the plaintiff in this action is entitled to recover from the said defendant upon the said cause of action the sum of (*three thousand (\$3,000) dollars*) with interest thereon from the (*15th*) day of (*July, 1904,*) over and above all counterclaims known to plaintiff.

That the defendant, the (*WILLIAM MORRIS COMPANY,*) is a foreign corporation, created by and existing under the laws of the State of (*New Jersey*), as appears by the certificate of the Secretary of State of the State of New Jersey hereto attached, and that the plaintiff has commenced this action to recover the said sum of (*three thousand (\$3,000) dollars*) with interest as aforesaid, upon the above cause of action and the summons herein, a copy of which is hereto annexed, has been duly issued and the warrant is asked for herein to accompany the same; that no previous application has been made for a warrant of attachment herein.

(*HENRY CURTIN.*)

Sworn to before me, this }
(*11th*) day of (*August, 1904.*) }

(*WILLIAM BLACK,*)

Notary Public,

(*New York*) County (*No. 17.*)

On Papers In Another Action.

FORM No. 5.

**Affidavit to Obtain Attachment — By Assignee of Cause of Action.
Attaching Copies of Papers on Which a Warrant Was
Granted Against Same Defendant.**

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(*ANDREW BATT*),

Plaintiff,

against

(*THE COLUMBIA COMPANY*),

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*ANDREW BATT*), being duly sworn, deposes and says that he is the plaintiff in the above-entitled action, and is a resident of this State. Deponent further says that the defendant is a foreign corporation, incorporated under the laws of the State of (*Minnesota*), and between (*January 2, 1904*) and (*February 3, 1904*), (*Charles Dale*), (*Edward Fielder*), and (*George Handy*) doing business under the firm name of (*Dale & Company*), sold and delivered to the said defendant (*The Columbia Company*), the following goods, at the agreed prices hereinafter stated, to wit: on (*January 4*), 3,400 baskets of grapes, making a total of (\$1,200), which was the price said company promised and agreed to pay for the said grapes, but never has paid for the same or any part thereof, as appears by the affidavit of (*Charles Dale*), verified the (*4th*) day of (*September, 1904*), hereto attached. The allegations as to the incorporation of the defendant and the allegations following next thereafter are made by this deponent upon information and belief, derived from two affidavits, upon which attachments were issued against the same defendant, both of which affidavits were filed in the office of the Clerk of the County of (*New York*); one made by (*Andrew Brady*), filed on the (*10th*) day of (*December, 1903*), in an action of (*Brady v. The Columbia Company*), the other made by (*David Coleman*), of which copies are hereto annexed marked respectively A. & B., and such

On Papers In Another Action.

original affidavits are hereby produced for inspection by this court. Deponent further says that the cause of action hereinbefore set forth has been assigned to this deponent, and deponent is now the lawful owner and holder thereof and was such when this action was begun, and that the said sum of (\$1,200) with interest from (*February 3, 1904*), is now due and owing to this deponent from the said defendant over and above all counterclaims known to deponent. The summons herein has been issued and no previous application for the present attachment has been made.

(*ANDREW BATT.*)

Sworn to before me, this }
 (8th) day of (*September, 1904*). }
 (*WILLIAM BLACK*),
 Notary Public,
 (*New York*) County, No. (17.)

FORM No. 6.

Affidavit to Obtain Attachment — Ground: Departure of Defendant in Similar Application.

SUPREME COURT OF THE STATE OF NEW YORK,
 County of (*New York*).

(<i>GENERAL SUPPLY CO.</i>)	}
Plaintiff,	
against	
(<i>LAWRENCE WEST</i>),	
Defendant.	

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*FREDERICK STOW*), being duly sworn, says, that the plaintiff herein is a domestic corporation, organized and existing under the laws of the State of New York, and having its principal place of business at (*No. 100 Broadway in the Borough of Manhattan, City of New York*).

That deponent is an officer of plaintiff, to wit: (*Treasurer*) thereof, and was such (*treasurer*) at all of the times hereinafter

On Papers In Another Action.

stated. That defendant as such (*treasurer*) now has, and at all of said times had, the general management, direction, and control of the business of said corporation.

That a cause of action exists in favor of plaintiff and against defendant, for the recovery of a sum of money only, as damages for a breach of contract, other than a contract to marry, and that said cause of action arose out of and is based upon the following facts, to wit:

(At the city of New York on or about the 1st day of (June, 1905), the defendant made his certain promissory note in writing, whereby he promised to pay to the order of plaintiff one month after date, twenty-five hundred dollars (\$2,500.00), with interest, at No. 45 Liberty street, New York City, and delivered the same to plaintiff. That plaintiff is now the owner and holder of said promissory note, and the same has not been paid nor any part thereof.)

That defendant was a resident of the State of New York on the (7th) day of (*February*, 1906), and that deponent is informed and verily believes that said defendant has departed from said State of New York with intent to defraud his creditors and to avoid the service of a summons. That the source of deponent's information and the grounds of his belief are the affidavits made in the case of (*Jacob Low*) against (*Lawrence West*), the above-named defendant, which action is now pending in this court, and which affidavits are respectively made by (*Joseph Kee*), verified the (9th) day of (*February*, 1906), and (*Peter Lewis*), verified the (9th) day of (*February*, 1906). That said affidavits were on the (10th) day of (*February*, 1898), presented to the Hon. (*Edward Patterson*), one of the justices of this court, and were on that day ordered filed, and filed in the office of the clerk of the county of (*New York*). That copies of said affidavits are hereto annexed and deponent refers to said original affidavits as a part of this affidavit, and exhibits them to this court.

That the plaintiff in this action is entitled to recover from the defendant on the cause of action above set forth, the sum of (*twenty-five hundred dollars (\$2,500.00)*), with interest thereon, from the (1st) day of (*July*, 1906), over and above all counter-claims known to deponent or to plaintiff.

That plaintiff has commenced this action to recover said sum of (*twenty-five hundred dollars (\$2,500.00)*), with interest as aforesaid, on said cause of action, and the summons herein has been duly issued, and a copy thereof is hereto annexed.

Affidavit Of Correctness Of Copies.

That no previous application has been made for a warrant of attachment herein.

(*FREDERICK STOW.*)

Sworn to before me, this }
 (12th) day of (*February*, 1906). }
 (*WILLIAM BLACK*),
 Notary Public,
 (*New York*) County, No. (17.)

FORM No. 7.

Affidavit of Comparison and Correctness of Copies.

SUPREME COURT OF THE STATE OF NEW YORK,
 County of (*New York*).

(*GENERAL SUPPLY COMPANY*),
 Plaintiff,
 against
 (*LAWRENCE WEST*),
 Defendant.

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*JAMES ROGERS*), being duly sworn says, that he is a stenographer and typewriter. That on the (11th) day of (*February*, 1906), he made the annexed copies of the affidavits of (*Joseph Kee*) and (*Peter Lewis*), filed in the office of the clerk of the county of (*New York*) on the (10th) day of (*February*, 1906), and referred to in the affidavit of (*Frederick Stow*) hereto annexed. That he has carefully compared the annexed copies of said affidavits with the originals thereof, and that said copies are true and correct copies of said originals.

(*JAMES ROGERS.*)

Sworn to before me, this }
 (12th) day of (*February*, 1906). }
 (*WILLIAM BLACK*),
 Notary Public,
 (*New York*) County, No. (17.)

On Assigned Cause Of Action.

FORM No. 8.

Affidavit to Obtain Attachment — Assigned Cause of Action.

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(ANDREW WILLIAMSON,)

Plaintiff,

against

(FRIEND FRUIT COMPANY,)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(ANDREW WILLIAMSON), being duly sworn, deposes and says: That he is the plaintiff in the above entitled action, and is a resident of this State. Deponent further says that the defendant is a foreign corporation, incorporated under the laws of the State of (*Minnesota*), and (*between January 1st, 1899*) and (*March 2nd, 1899, Charles Dane, Edward Foy, George Harper, Isaac Jansen, and Frank Lessing, doing business under the firm name of Harper and Company, sold and delivered to the said defendant, The Friend Fruit Company, the following goods at the agreed prices hereinafter stated, to wit: 4,000 baskets of grapes, for which the defendant agreed to pay the sum of \$1,200, but never has paid for the same or any part thereof*), which allegations as to the incorporation of the defendant and the sale and delivery of the said goods are made by this deponent upon information and belief, derived from the affidavit of (*Phillip Adena*), upon which an attachment was issued against this same defendant, which affidavit was filed in the office of the clerk of the county of (*New York*), in an action entitled (*Harper & Co. against Friend Fruit Company*), a copy of which affidavit is hereto annexed marked ("A"). The reason why deponent does not produce an affidavit by said (*Phillip Adena*) is that said (*Adena*) resides in (*Minnesota*), and is not now in the State of (*New York*), and deponent is unable to procure from him an affidavit as to the facts; deponent further says that the cause of action hereinbefore set forth has been assigned to this deponent, and deponent is now the lawful owner and

Affidavit By Agent.

holder thereof and was such when this action was begun, and that the said sum of (\$1,200), with interest, from the (2nd) day of (March, 1899) is now due and owing to this deponent from the said defendant over and above all counterclaims known to deponent. The summons herein has been issued and no previous application for the present attachment has been made, except that a prior attachment granted herein has been set aside by an order herein, and the action by said (Williamson) has been abandoned on the ground that this court has no jurisdiction to entertain the same.

(ANDREW WILLIAMSON.)

Sworn to before me, this
(12th) day of (September, 1904).

(WILLIAM BLACK),

Notary Public,

(New York) County, No. (17.)

FORM No. 9.

Affidavit to Obtain Attachment — By an Agent.

NEW YORK SUPREME COURT,
County of (New York).

(JOHN DOE,)

Plaintiff,

against

(RICHARD ROE,)

Defendant.

STATE OF NEW YORK, }
County of (New York), } ss.:

(ANTHONY BARLOW), being duly sworn, says he is the agent of the plaintiff herein (*who resides in Great Britain*), and deponent has sole charge of his business in the (*city of New York*). That the defendants are indebted to the plaintiffs in the sum of (\$850.00) over and above all counterclaims and set-offs known to plaintiffs or deponent, which indebtedness arose as follows: That at the (*city of New York, and between the (3rd)*)

Affidavit By Agent.

day of (July, 1899), and the (15th) day of (August, 1899), deponent on behalf of and as agent for the plaintiffs, sold and delivered to the defendants goods, wares, and merchandise amounting in value at prices agreed upon to the sum of (\$850.00), no part of which has been paid, except the sum of (\$200.00), leaving still due and owing the sum of (\$650.00), with interest thereon from the (15th) day of (August, 1899), which is now unpaid. And this deponent further alleges on information and belief derived from the affidavit of (Charles Done) and (Edward Fare), verified this (20th) day of (August, 1900), and hereto attached, that the defendants have disposed of their property with intent to cheat and defraud their creditors. No previous application of this warrant of attachment has been made.

(ANTHONY BARLOW).

Sworn to before me, this }
(20th) day of (August, 1900). }

(WILLIAM JAMESON),

Notary Public,

(New York) County (72.)

Affidavit By Agent.

FORM No. 10.

Affidavit to Obtain Attachment—By an Agent (another form).

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(ANDREW BOTT,)

Plaintiff,

against

(JOHN FRIEND and WILLIAM
JOHANSON,)

Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(FRED FRENCH), of the (*Borough of Manhattan*), being duly sworn, says he is the agent of the plaintiff herein (*who resides in Great Britain*), and deponent has sole charge of their business in the city of (*New York*). That the defendants are indebted to the plaintiff in the sum of (\$566.00) over and above all counterclaims and set-offs known to plaintiff or deponent, which indebtedness arose as follows: *That at the city of (New York), and between the (2nd) day of (January, 1904), and the (3rd) day of February, 1904), deponent, on behalf of and as agent for the plaintiff, sold and delivered to the defendants goods, wares, and merchandise, amounting in value at prices agreed upon to the sum of (\$586.00), no part of which has been paid, except the sum of (\$20.00), leaving still due and owing the sum of (\$566.00), with interest thereon from the (3rd) day of (February, 1904), and the same is now unpaid.* And this deponent further alleges on information and belief derived from the affidavits of (*Charles Dale and Edward Folk*), hereto attached, that the defendants have disposed of their property with intent to cheat and defraud their creditors. No previous application for a warrant of attachment has been made.

(FRED FRENCH.)

Sworn to before me, this }
(14th) day of (*June, 1904*). }

(WILLIAM BLACK),

Notary Public,

(*New York*) County, No. (17.)

Ground: False Statement.

FORM No. 11.

Affidavit to Obtain Attachment—Ground: Debtor's False Statement to Secure Credit.

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(*NEW YORK COMMERCIAL COMPANY,*)

Plaintiff,

against

(*HENRY HARD,*)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JAMES PEET*), being duly sworn, says that the plaintiff above named is a domestic corporation organized and existing under the laws of the State of New York, and having its principal place of business at (*No. 82 West street*), in the (*Borough of Manhattan, city of New York*).

1. That deponent is the (*president*) of said corporation, plaintiff, and was such (*president*) at all of the times hereinafter stated. That as such (*president*), deponent now has, and at all of said times had the management, direction, and control of plaintiff's business.

2. That a cause of action exists in favor of the plaintiff and against the above named defendant for the recovery of a sum of money only, as damages for a breach of an express contract, other than a contract to marry, and that said cause of action grew out of, and is based upon, the following facts, to wit:

3. *At the (city of New York), and on or about the (15th) day of (March, 1906), plaintiff sold and delivered to defendant at defendant's special instance and request, and at prices agreed upon, and on a credit of three months, certain goods, wares, and merchandise, to wit: (100 boxes of oranges), amounting in the aggregate at such agreed prices to the sum of (\$274.97). That said term of credit has expired, and said sum has not been paid, nor any part thereof.*

Ground: False Statement.

4. That plaintiff is entitled to recover from defendant on said cause of action said sum of (\$274.97), with interest thereon from said (15th) day of (*June*, 1906), over and above all counterclaims known to deponent or to plaintiff.

5. That plaintiff has commenced this action to recover said sum on said cause of action, and the summons herein has been duly issued, and a copy thereof is hereto annexed.

6. That at-said (*city of New York*), and on or about said (15th) day of (*March*, 1906), the above-named defendant for the purpose of procuring credit from the plaintiff, made a statement in writing under his own hand or signature as to his financial responsibility or standing, which statement was false and known by him so to be false at the time of making same. That a copy of said statement is hereto annexed marked Exhibit "A," and made a part of this affidavit.

7. That the goods, wares, and merchandise above referred to were sold to defendant, and that the credit above referred to was given to defendant, by plaintiff, relying in good faith upon the said statement, and believing the same to be true.

8. That said term of credit, given to defendant by plaintiff expired on the (15th) day of (*June*, 1906), and that on or about the said (15th) day of (*June*) plaintiff received a written communication from defendant, whereby defendant declared himself to be insolvent, stating that his liabilities largely exceeded his assets and offered to allow any one interested to examine his books. That a copy of said communication is hereto annexed marked Exhibit "B," and made a part of this affidavit. That thereupon deponent had defendant's said books examined by one (*Edward Cass*), an expert bookkeeper, and the result of said examination appears from the affidavit of said (*Edward Cass*), which is hereto annexed.

That no previous application has been made for a warrant of attachment (or order of arrest) in this action.

(JAMES PEET.)

Sworn to before me, this }
(20th) day of (*June*, 1906). }

(WILLIAM BLACK),

Notary Public,

(*New York*) County, No. (17.)

Ground: False Statement.

EXHIBIT "A."

Written Statement made by Debtor.

NEW YORK, (March 14th, 1906).

For the purpose of obtaining the credit this day granted me, and obtaining credit, which in the future may be granted me by (*The New York Commercial Company*), I make the following statement, which I know and declare to be true and correct, and I make it with the knowledge that the credit now or hereafter to be given me is given in reliance upon its truthfulness. This statement is made to apply to all future purchases, and is to be considered as repeated and confirmed at the time of each subsequent purchase, unless the said (*The New York Commercial Company*) is notified by me in writing to the contrary before such subsequent purchase.

In consideration of being granted said credit, I further agree that if after any purchase of merchandise from (*The New York Commercial Company*) on credit, any change occurs, diminishing my financial ability as below stated, to pay for said merchandise, I will within ten days after said change in my financial ability, notify in writing The New York Fruit Company of such change.

Before purchasing more merchandise from (*The New York Commercial Company*), I will in writing make known to it such change in my financial ability. When any bill for merchandise shall be past due and unpaid after demand, I will allow (*The New York Commercial Company*) to examine all my books by a bookkeeper or accountant selected by it.

City of New York.

Street and No. (6 Washington St.)

Business (*fruits*).Present style of firm (*Henry Hard*).Full names of partners (if any), (*none*).Assessed value of real estate belonging to (*none*).If mortgage, state amount of same (*none*).References (*J. Crowley, Edward Taft*).

ASSETS.

Mdse. cash value stock in hand — selling value...	(\$300 00)
Bills receivable, good and collectible when due, and not past due.....	(None)

Ground: False Statement.

ASSETS — *Continued.*

Accounts receivable, good and that are not three months past due.....	(\$300 00)
Cash in (<i>N. Y. National Bank</i>) (state name of Bank)	(300 00)
	<hr/>
Total	(\$900 00)
Cash in safe.....	(250 00)
	<hr/>
	(\$1,150 00)
	<hr/> <hr/>

LIABILITIES.

Bank accommodation	(<i>None</i>)
Borrowed money	(<i>None</i>)
Mdse. liabilities	(\$200 00)
Other liabilities	(<i>None</i>)
	<hr/>
Total	(\$200 00)
	<hr/> <hr/>
Safe net surplus, insured for.....	(\$700 00)
	<hr/> <hr/>

(*HENRY HARD.*)

(*THOS. McDUFF*),

Witness.

EXHIBIT "B."

Affidavit of Accountant.

NEW YORK SUPREME COURT,

(*New York*) County.

(*NEW YORK COMMERCIAL COMPANY,*)

Plaintiff,
against

(*HENRY HARD,*)

Defendant.

STATE OF NEW YORK, }
County of (*New York*). }

(*EDWARD CASS*), being duly sworn, says that he understands the art of bookkeeping and of accounts and is expert in the

Ground: False Statement.

same, and is in the employ as general bookkeeper of plaintiff herein and has been engaged in bookkeeping from time to time for (*ten*) years past.

That on or about (*June 17th*, 1906), at the request of plaintiff, deponent went to the place of business of the defendant, and there examined his books together with the statement or balance sheet of defendant made (*June 15th*, 1906).

(*That the books of defendant show that he was indebted on March 14th*, 1906, to the following parties in the amounts set opposite their names respectively:

<i>Jones & Co.</i>	\$167 38
<i>Keep & Co.</i>	55 00
<i>R. May</i>	255 00
<i>Total</i>	<u>\$477 38</u>

Whereas the statement of defendant made *March 14th* shows his total indebtedness to be two hundred (200) dollars.)

(*EDWARD CASS*),

Sworn to before me, this }
(*18th*) day of (*June*, 1906). }

(*WILLIAM TUCK*),
Notary Public,
(*New York*) County, No. (28).

ARREST.

ORDER OF ARREST.

FORM No. 12.

Order to Arrest and Hold to Bail.

NEW YORK SUPREME COURT,
(*New York*) County.

(*THOMAS GUY, BURTON LAMB*
and WILLIAM LAMB, doing busi-
ness as co-partners under the name
and style of

GUY, LAMB & CO.,)

Plaintiffs,

against

(*JOHN SHARPE,*)

Defendant.

To the Sheriff of the County of (*New York*):

It having been made to appear to me by the affidavit of (*Burton Lamb*), verified the (*5th*) day of (*September, 1904*), that a sufficient cause of action exists against the defendant, (*John Sharpe*), and that the case is one of those mentioned in article 1st, chapter 7, title 1, of the New York Code of Civil Procedure, and that the ground of arrest is (*fraud and misrepresentation in inducing plaintiffs to enter into a contract for the sale and delivery of merchandise*).

YOU ARE REQUIRED forthwith to arrest (*John Sharpe*), the defendant in this action, if he be found within your county, and to hold him to bail in the sum of....., and to return this order, with your proceedings thereunder, as prescribed by law.

(*Dated, September 7th, 1904.*)

(*HENRY A. GILDERSLEEVE*),

Justice of the (*Supreme*) Court.

NELSON DOW,

Plaintiff's Attorney,

206 Broadway, New York city.

Undertaking.

FORM No. 13.

Undertaking on Order of Arrest.

NEW YORK SUPREME COURT,
(*New York*) County.

(*THOMAS GUY, BURTON LAMB*
and WILLIAM LAMB, doing busi-
ness as

GUY, LAMB & CO.,)

Plaintiffs.

against

(*JOHN SHARPE,*)

Defendants.

WHEREAS, (*Thomas Guy, Burton Lamb, and William Lamb*), the plaintiffs above named, are about to make application to one of the *justices* of the above-named court for an order for the arrest of the above-named defendant, (*John Sharpe*), in the above-entitled action for (*damages arising from the fraud and misrepresentation of said defendant, inducing the plaintiffs to enter into a contract for the sale and delivery of merchandise, and from breach of said contract.*)

NOW, THEREFORE, we, (*Charles A. Brown, of No. 16 Madison avenue*), in the (*Borough of Manhattan*), city of (*New York*), and (*James Stillman*), of (*No. 72 West 54th street, in said city*) and (*Borough*), do hereby, pursuant to the statute in such case made and provided, jointly and severally undertake, that if the defendant in said action recover judgment therein, or if it is finally decided that the plaintiffs are not entitled to the order of arrest, the said plaintiffs in said action will pay all costs which may be awarded to the said defendant, and all damages which he may sustain by reason of the arrest in said action, not exceeding the sum of.....dollars.....

(*CHARLES A. BROWN.*)

(*JAMES STILLMAN.*)

Dated, (*September 5, 1904*).

Undertaking.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*CHARLES A. BROWN*), one of the subscribers and sureties above named, being duly sworn, says, that he is a resident of, and a householder within the State of New York, and is worth the sum ofdollars over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

(*CHARLES A. BROWN.*)

Sworn to before me, this }
(5th) day of (*September, 1904*). }

(*ALBERT BORDEN*),
Notary Public,
(*N. Y.*) Co.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JAMES STILLMAN*), one of the subscribers and sureties above named, being duly sworn, says, that he is a resident of and a free-holder within the State of New York, and is worth the sum ofdollars over all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

(*JAMES STILLMAN.*)

Sworn to before me, this }
(5th) day of (*September, 1904*). }

(*ALBERT BORDEN*),
Notary Public,
(*N. Y.*) Co.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

I CERTIFY, that on this (5th) day of (*September, 1904*), before me personally appeared (*Charles A. Brown and James Stillman*), to me known, and known to me to be the same persons described in and who executed the above undertaking, and they severally acknowledged to me that they had executed the same.

(*ALBERT BORDEN*),
Notary Public.

Affidavit.

I approve of the above undertaking as to form, and the sufficiency of the sureties therein named.

Dated, (*New York, September 7, 1904*).

HENRY A. GILDERSLEEVE,
J. S. C.

NOTE. — AN AFFIDAVIT TO OBTAIN AN ORDER OF ARREST SHOULD SHOW:

(A). When right is based on nature of action.

1. That one of the causes of action set forth in subdivision 1, 2, and 3 of section 549 of the Code of Civil Procedure exists in favor of the plaintiff. This must be shown by a statement of the facts out of which the cause of action arises. It is also well to state specifically the ground on which the arrest is claimed.
2. That an action has been commenced (and the status thereof), or that an action is about to be begun and a summons issued, and copy annexed.
3. That no previous application has been made.

(B). Where the right to arrest depends upon extrinsic facts.

1. That a cause of action express or implied (other than a contract to marry) exists in favor of the plaintiff.
2. *Further* facts showing that one of the causes stated in subdivision 4 of section 549 exists.
3. That the judgment asked requires the performance by the defendant of an act, failure to perform which, may be punished as contempt, *and* that
 - (a) Defendant is a non-resident or
 - (b) A resident and intends to depart from the jurisdiction, and that the performance of the court's order or judgment will thereby be rendered ineffectual.

As to manner of stating facts, see note on attachment, p. 181.

Ground: Removal Of Goods.

FORM No. 14.

**Affidavit to Obtain Order of Arrest — Ground: Removal of Goods
with Intent to Defraud Creditors.**

(CITY COURT OF THE CITY OF NEW YORK.)

(ANDREW OLWELL and HER-
MAN L. KALTENBACK,)

Plaintiffs,

against

(HARRY N. BRONSON, GEORGE
E. SECOUR and JOHN S.
POPE,) Defendants.

STATE OF NEW YORK, }
County of (New York), } ss.:

(HERMAN L. KALTENBACK), being duly sworn, deposes and says:

That he is one of the plaintiffs in the above-entitled action, and that they are doing business under the firm name of (*Marshall, Olwell & Company*), and the defendants above named are co-partners doing business in the (*city of New York*), under the firm name of (*Bronson, Secour & Pope*); that the defendants above named are indebted unto the plaintiffs in the sum of \$1,399 34/100, which sum is due over and above all counterclaims and set-offs known to deponent or to these plaintiffs, and this action is brought to recover damages for breach of contract, other than a contract to marry, and arises as follows:

Between the 1st day of July, 1903, and the 19th day of August, 1904, this deponent's firm sold and delivered unto the defendants in their said firm name, goods, wares, and merchandise upon a credit and of the value and at the agreed price of \$2,396 31/100, and defendants have paid on account thereof the sum of (\$997 17/100), leaving a balance due plaintiffs by the defendants of \$1,399 34/100, which sum is now due the plaintiffs as hereinbefore alleged.

That deponent charges that the defendants have disposed of, and are about to dispose of their property with intent to cheat, hinder,

Ground: Removal Of Goods.

delay and defraud their creditors, among them this deponent's firm from personal knowledge of the facts hereinafter set forth.

From the 1st day of December deponent repeatedly sent to the defendants for the money due without avail. On the 30th day of December, 1889, this deponent sent for Mr. Bronson one of the defendants, desiring to see him at his, deponent's office. Said Mr. Bronson called there and deponent stated to him in the presence of Mr. Olwell, his partner, that the moneys due to his firm must be paid; that he had heard that his Mr. Bronson's firm were going behind and were insolvent, and could not possibly pay their debts in full. Mr. Bronson then said that Mr. Pope of his firm had severed his connections with the firm, and that he and Mr. Secour were liquidating its liabilities; that they were insolvent, and could not pay, as the thing then stood, more than fifty cents on the dollar, providing the creditors would permit them to continue the business without molestation, but that if they were pressed several of the creditors had threatened to bring suit, and there would be nothing else left for them to do but to wind up.

Deponent said, "How and when will we get our money and how much, if we take no proceedings against you?" Mr. Bronson said, "I can't exactly tell. I have been in business a great many years, and I don't intend to go out and leave myself high and dry and unprovided for. If the creditors take proceedings against me I shall have to do something to protect myself, and I certainly think it would be wiser for you to leave us alone and see what will come out of it." Deponent said, "We don't intend to let you carry on this business while you are insolvent, and thus eat up what little there is there." The defendant Bronson said, "You go ahead and you can do just as you please. If you sue us you will get nothing."

Deponent has ascertained that Mr. Pope of the said firm is now in Europe, having gotten out of the firm while they were insolvent, and that there is no chance of process being served upon him.

Deponent prays on behalf of the plaintiffs that an [attachment issue herein against the property of the defendants] order issue to the sheriff of the county of (*New York*), directing him to arrest the said defendants, or any of them, and hold them to bail.

Ground: Removal Of Goods.

No previous application has been made for the same to any other judge or court.

(*HERMAN L. KALTENBACK.*)

Sworn to before me, this }
(31st) day of (*December, 1903*). }

(*OSCAR K. BROWNE*),
Notary Public,
(*New York*) County, No. (64).

FORM No. 15.

Affidavit in Support of Same.

(*CITY COURT OF THE CITY OF NEW YORK.*)

(*ANDREW OLWELL* and *HER-*
MAN L. KALTENBACK),

Plaintiffs,

against

(*HARRY N. BRONSON, GEORGE*
E. SECOUR and *JOHN S.*
POPE),

Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*ANDREW OLWELL*), being duly sworn, deposes and says:

He is one of the firm of (*Marshall, Olwell & Co.*), the plaintiffs in this action, and the defendants as co-partners are indebted to the plaintiffs in the sum of (\$1,399.34) over and above all counter-claims and set-off known to deponent, which sum is for goods sold and delivered to the defendants.

That on the (30th) day of (December, 1903), he was present when (Mr. Bronson) came into the office at the request of (Mr. Kaltenback), and he overheard the conversation had between them and the statement alleged in the affidavit of (Mr. Kaltenback) as

Ground: Fraudulent Misrepresentation.

to the conversation is correct as between said Kaltenback and said Mr. Bronson.

(ANDREW OLWELL.)

Sworn to before me, this
(31st) day of (December, 1903). }

(OSCAR K. BROWNE),
Notary Public,
(New York County), No. (64).

FORM No. 16.

Affidavit to Obtain Order of Arrest — Ground: Fraudulent Misrepresentations.

NEW YORK SUPREME COURT,
(New York) County.

(THOMAS GUY, BURTON LAMB,
and WILLIAM LAMB, doing business
as co-partners under the name
and style of

GUY, LAMB & CO.,)

Plaintiffs,

against

(JOHN SHARPE,)

Defendant.

STATE OF NEW YORK, }
County of (New York), } ss.:

BURTON LAMB, being duly sworn, says:

I. I am (a member of the firm of Guy, Lamb & Co., and) one of the plaintiffs above named. For a year past I had entire charge of said firm's department of credit and accounts and am familiar with all transactions had by said firm with (John Sharpe), the defendant, during that time.

Ground: Fraudulent Misrepresentation.

II. A cause of action exists in favor of the plaintiffs above named and against the defendant, (*John Sharpe*), for damages arising from false and fraudulent misrepresentations made by the said (*Sharpe*) to the plaintiffs for the purpose of inducing plaintiffs to sell goods to defendant upon credit and with intent to cheat and defraud plaintiffs out of the purchase price of said goods, and an action is about to be brought by plaintiffs against the defendant upon said cause of action, as more fully appears by the summons and complaint hereto annexed (or an action has been brought upon said cause of action and the summons therein served on the defendant on the *tenth* day of *March*, 1904. Defendant has not appeared in said action and the complaint has not yet been served).

III. The facts constituting plaintiffs' cause of action are as follows:

IV. Heretofore and on or about the *5th* day of *January*, 1904, the defendant, (*John Sharpe*), ordered of the plaintiffs a bill of merchandise consisting of (*silks and velvets*) of the value of, and for which the defendant promised and agreed to pay (*eighteen hundred*) dollars upon a term of credit of (*thirty*) days. For the purpose of inducing the plaintiffs to sell said merchandise to him said defendant, who was engaged in business as (*retail dealer in dry goods*, at *Middletown, New York*), stated and represented to the plaintiffs, among other things, that he had a stock of goods worth at least (\$7,000.00,) (\$1,500.00) in good and collectible accounts, and was worth over all debts and liabilities which he owed or had incurred at least the sum of (\$10,000.00) based on the assets and liabilities of his business. Said defendant further stated and represented to the plaintiffs that his liabilities did not exceed \$2,000.00, which was for merchandise only and that at that time he was owing no borrowed capital or money, all of which statements were false and made by said (*John Sharpe*), knowingly and with intent to deceive and defraud the plaintiffs.

V. Plaintiffs relying on said statements and believing them to be true, were induced solely by reason of said statements and representations, to sell and deliver, and did sell and deliver, to the defendant the bill of merchandise above mentioned, on or about the (*10th*) day of (*January*, 1904). No part of the sum of (*eighteen hundred*) dollars, which the defendant promised and agreed to pay within (*thirty*) days after the delivery of said goods, has been paid.

Ground: Fraudulent Misrepresentation.

VI. On or about (*January 11, 1904*), I was informed by (*Henry Nason*), a member of the firm of (*Douglass, Nason & Co.*), that said firm had sold and delivered to the defendant, (*John Sharpe*), prior to (*January 5, 1904*), the date on which the defendant made the statements and representations as above set forth, bills of merchandise amounting to (\$2,500) on credit of (*sixty*) days, no part of which had yet been paid. An affidavit of said (*Henry Nason*), verified the (*fifth*) day of (*February, 1904*), is hereto annexed.

VII. On *January 15, 1904*, I visited defendant's place of business and made an examination of the stock therein and found that more than three-fourths of said stock consisted of old goods that could not be readily marketed except at a great sacrifice. In my opinion the present value of the whole of said stock, aside from the goods purchased from (*Douglass, Nason & Co.*), referred to, does not exceed (*two thousand dollars*).

VIII. On or about (*January 25, 1904*), the defendant confessed judgment in the Supreme Court in favor of (*Henrietta Sharpe*), his wife, by a statement and confession of judgment duly verified and filed in the office of the Clerk of the County of (*Westchester*) on that day for the sum of (*four thousand*) dollars. Said statement and confession of judgment states that the same was made for money loaned by said (*Henrietta Sharpe*) to the defendant at various times between (*March 1, 1903*), and (*December 15, 1903*), and that there was then due and unpaid from the defendant to said (*Henrietta Sharpe*) the sum of (\$4,000), as by reference to said confession of judgment filed in said County Clerk's office, to which deponent begs leave to refer, and by the certified copy thereof hereto annexed will more fully appear.

I therefore state to the court that the representations and statements made by defendant to the plaintiffs on the (*5th*) day of (*January, 1904*), were false and were knowingly and deliberately made for the purpose of defrauding plaintiffs.

No previous application for an order of arrest has been made.

(*BURTON LAMB.*)

Sworn to before me, this }
(*10th*) day of (*March, 1904*). }

(*FRANK WOOD*),

Notary Public,

(*N. Y.*) Co.

NOTICE OF CLAIM.

FORM No. 17.

Notice of Intention to Sue Municipal Corporation for Personal Injury.*

IN THE MATTER OF THE
Claim of
(ALICE SMITH,)
against
(THE CITY OF NEW YORK.)

Gentlemen:

PLEASE TAKE NOTICE that I, (*Alice Smith,*) the undersigned, pursuant to the statutes in such cases made and provided, do hereby claim and demand of and from the (*City of New York*) the sum of (\$5,000) as and for damages sustained by reason of the injury caused me on the (23d) day of (*March, 1907*), by and through the negligence of (*the City of New York,*) its officials, agents and servants, in (*permitting that portion of the sidewalk on the west side of Eighth Avenue in the City of New York between Twenty-fifth and Twenty-sixth Streets to be in an unsafe and unpassable condition so that I, the said Alice Smith, in passing on said sidewalk on or about the said 23d day of March, 1907, fell into a deep hole or depression in the sidewalk and was thereby severely injured.*)

You will please further take notice that I, the undersigned, will claim, charge and maintain that the said injury was caused without any negligence on my part and wholly through the negligence of (*the City of New York,*) its officials, agents and servants, in negligently and improperly (*suffering and permitting the said sidewalk on said street or avenue to remain in a dangerous con-*

* This notice is applicable only to actions for personal injuries. In actions for injuries to property arising from negligence or nuisance a verified statement in detail of the property and its value, as well the notice of intention to commence action and the presentation of the claim for adjustment. See note, p. 209.

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dition and in permitting its use while in said condition without proper safeguards or other signals or warning.)

You will further take notice that, in default of the (*City of New York*) to pay me the aforesaid sum of (\$5,000,) within the time limited for compliance with this demand by the said (*City*) in such cases made and provided, I shall commence an action against the (*City of New York*) on the claim for (\$5,000,) for damages for said injury.

Dated, (*New York, April 10, 1907.*)

Respectfully yours,

(*ALICE SMITH,*) Claimant,

(*231 West 87th Street,*)

(*Borough of Manhattan,*)

(*JAMES BURR,*)

(*City of New York.*)

Atty. for (*Alice Smith,*) Claimant,

(*27 Pine Street,*)

(*New York City.*)

To

(*Herman A. Metz,*) Comptroller,

(*William B. Ellison,*) Corporation Counsel.

The foregoing notice must be served within six months, and the action must be begun within one year after the cause of action accrues. In New York city it is necessary in actions for negligence to serve a notice on the corporation counsel (Laws of 1886, chapter 572) and also on the comptroller (Laws of 1901, chapter 466). Section 261 of the charter of the city of New York as amended by chapter 677, Laws 1907, provides as follows:

No action or special proceeding for any cause whatever shall be prosecuted or maintained against the City of New York unless it shall appear by and as alleged in the complaint or necessary moving papers that at least thirty days have elapsed since the demand, claim or claims, upon which such action or special proceeding is founded were presented to the Comptroller of said city for adjustment, and that he has neglected or refused to make an adjustment or payment for thirty days after such presentment; and in the case of claims against New York City accruing after July 20th, 1907, for damages for injuries to personal property, or for the destruction thereof, alleged to have been sustained by reason of the negligence of, or by the creation or maintenance of a nuisance by, said city or any department board, officer, agent or employee thereof, no action thereon shall be maintained against said city

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unless such action shall be commenced within one year after the cause of action therefor shall have accrued, nor unless notice of the intention to commence such action and of the time when and place where the damages were incurred or sustained, together with a verified statement showing in detail the property alleged to have been damaged or destroyed, and the value thereof, shall have been filed with the Comptroller of said city within six months after such cause of action shall have accrued.

As different city charters vary as to officers to be served and time when notice must be served the charter of the municipality to be sued should be examined. (L. 1886, ch. 572.)

The filing of this notice must be pleaded.

(*Smith v. The City of New York*, 88 App. Div. 606.)

FORM No. 18.

Notice of Proposed Action Against Village.

To the Village Clerk of the Village of (*Groton*.)

PLEASE TAKE NOTICE that (*Arnold Bailey*) has a claim against the village of (*Groton*) for damages for personal injuries arising upon the following facts, (*here insert time, place of accident, nature and extent of injury and the cause thereof*) and that an action will be begun against said village to recover the sum of \$5,000.

Dated, the (23d) day of (*February*, 1906.)

(*ARNOLD BAILEY.*)

STATE OF NEW YORK, }
County of (*Tompkins*), } ss.:

(*Arnold Bailey*), being duly sworn, deposes and says that he is the claimant mentioned in and who executed the foregoing notice of claim; that the statements of fact therein contained are true to his own knowledge.

Sworn to before me, this
(23d) day of (*February*, 1906.)

(*CHARLES JOHNSON*),

Notary Public

(*Tompkins*) County.

See Village Law, Laws of 1897, chap. 414, §§ 322; 83
App. Div. 581; 135 N. Y. 366.

To Employer — To Comptroller, New York City.

FORM No. 19.**Notice of Injury under Employers' Liability Act.**To (*The Vapo Vapor Co.* :)

(Name of employer.)

PLEASE TAKE NOTICE, that (*ARCHER BARNES*,) on the (12th) day of (*March*, 1907,) at (stating accurately the place of injury) was injured in the following manner (state as fully as possible the cause and the extent of the injury) (and that such injury resulted in the death of said (*Archer Barnes*,) on the (8th) day of (*March*, 1907.)

Dated, the (22^d) day of (*April*, 1907.)

Yours, etc.,

(CHARLES DAMEN,) executor.

Laws of 1902, chapter 600.

Grasso v. Holbrook, 102 App. Div. 49, but see Labor

Law, Laws of 1897, chapter 415.

Williams v. Roblin, 94 App. Div. 177.

FORM No. 20.**Notice to Comptroller of New York City on Contract Claim.**To (*Herman A. Metz*,) Comptroller of the City of New York:

PLEASE TAKE NOTICE that I, (*George Busse*,) the undersigned, notify you, pursuant to the statute in such cases made and provided, that I claim and demand of and from the City of New York the sum of (*five thousand, seven hundred* (\$5,700) dollars, by reason and on account of (here give a particular statement of the facts constituting the claim.)

Please further take notice that, upon default of the said city to pay to me, the undersigned, the said sum of (\$5,700,) within the time limited by the statute in such cases made and provided, I will commence an action against said city to recover said sum of (\$5,700) on account thereof.

Dated, (*New York*,) the (10th) day of (*April*, 1907.)

(GEORGE BUSSE.)

(JAMES GORDON,)

Attorney for (*Claimant*,)

(27 Pine Street,)

(New York City.)

SUMMONS.

FORM No. 21.

Summons.

SUPREME COURT OF THE STATE OF NEW YORK.

(JOHN JONES,) Plaintiff,
against
(JOHN DOE and RICHARD ROE,) Defendants.

*Trial desired in the
county of (New
York).*

To the above-named defendants and each of them:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated (*June 4th*, 1904).

(WILLIAM REILLY,)

Plaintiff's Attorney.

Office and Post-Office Address, (*No. 52 William Street,*) (*Borough of Manhattan,*) (*City of New York*).

NOTE.

If the action is one mentioned in section 420, C. C. P., and complaint does not accompany summons, it is desirable that a notice be served with the summons to the effect that in default of appearance judgment for a specified amount will be taken. The giving of this notice expedites the entry of judgment upon default. The following is the form of notice:

“Notice is hereby given you that upon your default to appear or answer the within summons judgment will be taken against you. for the sum of (*one thousand* (1,000) *dollars*), with interest from

Indorsements.

the (1st) day of (*February*, 1904,) together with the costs of this action."

(THEODORE WILLIAMS,)

Plaintiff's Attorney,

(No. 11 Wall Street,)

(Borough of Manhattan,)

(New York City.)

In matrimonial actions.

If the action is for an absolute divorce, there should be written upon the face of the summons the words

"ACTION FOR A DIVORCE."

If the action is one for a separation, there should be written upon the face of the summons the words

"ACTION FOR A SEPARATION."

If the action is one to annul a marriage, there should be written upon the face of the summons the words

"ACTION TO ANNUL A MARRIAGE."

In statutory action.

If the action is one to recover a penalty, and the complaint is not served with the summons, a general reference to the statute must be indorsed upon the copy of the summons delivered to the defendant; such notice should be in the following form:

"According to the provisions of section (1), chapter (322), of the Laws of (1895) of the State of New York, entitled ('*An Act to prevent burning of soft coal in factories in the city of Brooklyn*')."

As to summons generally and its form, see *Abbott's Practice and Forms*, Volume 1, page 622, and *Nichols N. Y. Practice*, Volume 1, section 696 *et seq.*

Foreclosure.

FORM No. 22.

Notice of Object of Action with Notice of No Personal Claim —
Foreclosure.NEW YORK SUPREME COURT,
(*New York*) County.

(JOHN JONES,)

Plaintiff,

against

(JOHN DOE,) (RICHARD ROE)
and (THOMAS WILLIAMS),
Defendants.To the above-named defendant, (*THOMAS WILLIAMS*):

Pursuant to section 423 of the Code of Civil Procedure, TAKE NOTICE, that the object of this action, in which a summons is herewith served upon you, is to foreclose a mortgage executed by (*John Doe*) to (*John Jones*), dated the (1st) day of (*July*, 1901), and recorded in the office of the (*Register*) of the county of (*New York*), in Liber No. (2), of (*Mortgages*), page (450), on the (1st) day of (*February*, 1901), at (9:30) o'clock (*A.*) M., to secure the payment of the sum of (*one thousand* (1,000)) dollars, with interest thereon from the (1st) day of (*February*, 1904).

That there is now due and owing to this plaintiff on said bond and mortgage the sum of (*one thousand* (1,000)) dollars. with interest thereon from the (1st) day of (*February*, 1904); that the following is a description of the mortgaged premises (*here insert description of premises as contained in the complaint*);

That no personal claim is made against you or any defendant, except the defendants (*John Doe*) and (*Richard Roe*).

Dated the (12th) day of (*July*, 1904).

(ROBERT JENSEN,)

Plaintiff's Attorney,

(No. 11 Wall Street,)

(Borough of Manhattan,)

(City of New York.)

LIS PENDENS.

NOTE.

This notice of pendency of action should be filed with the verified complaint. Section 1670, Code Civ. Proc.

This notice and the complaint may be filed before the service of the summons, in which case, within sixty days after filing, the service of the summons must be made or publication thereof begun. Section 1670, Code of Civ. Proc., and see section 1631. See also *Abbott Prac. and Forms*, vol. I, p. 879.

FORM No. 23.

Notice of Pendency of Action — Foreclosure.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i>),	}
Plaintiff,	
against	
(<i>JOHN DOE</i>) and (<i>RICHARD ROE</i>),	
Defendants.	

NOTICE IS HEREBY GIVEN, that an action has been commenced and is pending in this court upon a complaint of the above-named plaintiff against the above-named defendants for the foreclosure of a certain mortgage bearing date the (8th) day of (*January*, 1904), executed by (*James Thompson*) and (*Edward French*) of the (*City, County and State of New York*), to (*William Allen*) of the (*City of Newburgh, Orange*) County, State of (*New York*) and which has been duly assigned to the above-named plaintiff to secure the payment of the sum of (*five thousand*) dollars on the (8th) day of (*January*, 1905), with interest at the rate of (*five*) per cent. per annum, which mortgage was recorded in the office of the (*Register of the City and County of New York*) on the (9th) day of (*January*, 1904), at (11:30) o'clock in the (*fore*) noon, in Block Series (49) of Mortgages,

Foreclosure.

Section 5, Liber 178, page 470. Indexed under Block No. (1441) on the land map of the (*City of New York.*)

That the premises affected by the said action were, at the time of the commencement thereof, and at the time of the filing of this notice, situate in the (*12th Ward of the Borough of Manhattan, City and County of New York*), in the State of New York, and are described as follows, to wit: Beginning at a point on the (*southerly*) side of (*23rd*) street, distant (*200*) feet from the (*south-west*) corner of (*Sixth avenue*); running thence (*southerly*) (*100*) feet, thence (*westerly*) (*25*) feet, thence (*northerly*) (*100*) feet, and thence (*easterly*) (*25*) feet to the point or place of beginning be the said several distances and dimensions, more or less, together with the building and appurtenances thereon.

Dated, *New York*, (*May 2d*, 1904).

(*WILLIAM REILLY*),

Plaintiff's Attorney.

Office and Post-Office Address, (*52 William Street, Borough of Manhattan,*) (*New York City.*)

The clerk of the county of (*New York*) is directed to index this notice to the names of the defendants.

(*WILLIAM REILLY*),

Plaintiff's Attorney.

FORM No. 24.

Notice of Pendency of Action.

SUPREME COURT OF THE STATE OF NEW YORK,
(*New York*) County.

(*JOHN JONES*),

Plaintiff,

against

(*JOHN DOE*) and (*RICHARD ROE*),

Defendants.

NOTICE IS HEREBY GIVEN, that an action has been commenced and is pending in this court upon a complaint of the above-named plaintiff against the above-named defendants for

General Form.

That the premises affected by the said action were, at the time of the commencement thereof, and at the time of the filing of this complaint, situated in the (12th Ward) of the (*City and County of New York in the State of New York*) and are described as follows, to wit:

be the said several distances or dimensions, more or less, together with the building and appurtenances thereon.

Dated, (*New York, May 2, 1904*).

(*WILLIAM REILLY,*)

Plaintiff's Attorney.

Office and Post-Office Address, (*52 William Street*), (*New York City.*)

The Clerk of the County of (*New York*) is directed to index this notice to the names of the defendants.

(*WILLIAM REILLY,*)

Plaintiff's Attorney.

NOTE.

The above skeleton form of *lis pendens* is given so that the practitioner having many cases where *lis pendens* is filed may fill in blanks to suit his peculiar needs, thus having handy a complete form as a mechanical aid for use in his office.

NOTICE OF APPEARANCE.

FORM No. 25.

General Notice of Appearance and Demand.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i>),	}
Plaintiff,	
against	
(<i>JOHN DOE</i>),	
Defendant.	

Sir :

PLEASE TAKE NOTICE, that the defendant above named (*John Doe*) hereby appears in the above entitled action, and that I am retained as attorney for the said defendant in this action, and hereby demand that a copy of the complaint and of all other papers in this action be served on me at my office (*No. 15 William street*), (*Borough of Manhattan, City of New York*).

Dated (*May 12, 1904*).

Yours, etc.,
(*EZRA WILLIAMS*),
Attorney for Defendant,
Office and Post Office Address,
(*No. 15 William Street*),
(*Borough of Manhattan*),
(*City of New York*).

(*WILLIAM REILLY*), Esq.,
Attorney for Plaintiff,
(*No. 27 Pine Street*),
(*New York City*).

Special.

FORM No. 26.

Notice of Appearance (Special).

NEW YORK SUPREME COURT,
(*New York*) County.

(*JOHN DOE,*)

Plaintiff,

against

(*RICHARD ROE,*)

Defendant.

Sir:

PLEASE TAKE NOTICE that I appear on behalf of (*Richard Roe*), as his counsel, for the purpose and only for the purpose of (*moving to set aside the service of the summons and complaint herein upon the said Richard Roe*), and that the said (*Richard Roe*) does not appear generally in this action.

Dated (*August 31, 1904*).

(*THEODORE CEASAR*),

Defendant's Attorney,

Office and P. O. Address,

(*No. 15 William Street,*

Borough of Manhattan,

City of New York).

To

(*WILLIAM REILLY*), Esq.,

Attorney for Plaintiff,

Office and P. O. Address,

(*No. 13 Wall Street,*

Borough of Manhattan,

City of New York).

Foreclosure.

FORM No. 27.**Notice of Appearance (Foreclosure).**

NEW YORK SUPREME COURT,
(*New York*) County.

(*JOHN DOE,*)

Plaintiff,

against

(*RICHARD ROE,*)

Defendant.

Sir:

PLEASE TAKE NOTICE, that the defendant (*Richard Roe*) appears herein; that I am retained as attorney for him herein, and hereby waive service of all papers and of notices of all proceedings herein, except notice of sale and of proceedings to obtain surplus moneys.

Dated (*August 31, 1904*).

(*THEODORE CEASAR,*)

Defendant's Attorney,

Office and P. O. Address,

(*No. 15 William Street,*

Borough of Manhattan,

City of New York).

To

(*WILLIAM REILLY,*) Esq.,

Attorney for Plaintiff,

Office and P. O. Address,

(*No. 13 Wall Street,*

Borough of Manhattan,

City of New York).

COMPLAINTS.

FORM No. 28.

For Goods Sold and Delivered (Agreed Price).

(CITY COURT OF THE CITY OF NEW YORK).

(JOHN JONES,)

Plaintiff,

against

(JOHN DOE,)

Defendant.

The plaintiff above-named, by his attorney (*William Reilly*), complains of the above-named defendant, and respectfully shows to this court:

FIRST: That at the (*city of New York*), on or about the (*first*) day of (*May*, 1902), the plaintiff above named, at the special instance and request of the defendant above named, and at prices agreed upon, sold and delivered to said defendant goods, wares, and merchandise, amounting in the aggregate at such agreed prices to the sum of (*one thousand* dollars (\$1,000)).

SECOND: The said sum has not been paid, nor any part thereof, although payment thereof has been duly demanded.

WHEREFORE plaintiff demands judgment against the defendant for the sum of (*one thousand* dollars (\$1,000)), with interest from the (*second*) day of (*January*, 1903), *together with the costs and disbursements of this action.

(*WILLIAM REILLY*),

Plaintiff's Attorney,

(*27 Pine Street*),

(*Manhattan Borough*),

(*New York City*).

(Verification.)

* Interest runs from demand.

Goods Sold And Delivered — Reasonable Value.

FORM No. 29.**For Goods Sold and Delivered (No Agreed Price).***(CITY COURT OF THE CITY OF NEW YORK).**(JOHN JONES,)*

Plaintiff,

.against

(JOHN DOE,)

Defendant.

The plaintiff above named, by his attorney (*William Reilly*), complains of the above-named defendant, and respectfully shows to this court:

FIRST: That at the (*city of New York*), on or about the (*first*) day of (*May*, 1902), the plaintiff above named, at the special instance and request of the defendant above named, sold and delivered to said defendant goods, wares and merchandise of the reasonable value of (*one thousand*) dollars (\$1,000).

SECOND: The said sum has not been paid, nor any part thereof, although payment has been duly demanded.

WHEREFORE plaintiff demands judgment against the defendant for the sum of (*one thousand*) dollars (\$1,000), with interest from the (*first*) day of (*January*, 1903), together with the costs and disbursements of this action.

(WILLIAM REILLY),

Plaintiff's Attorney,

(27 Pine Street),

(Manhattan Borough),

(New York City).

(Verification.)

Money Had And Received.

FORM No. 33.

Complaint for Money Had and Received.*

SUPREME COURT OF THE STATE OF NEW YORK,
(*New York*) County.

(ANN SHARP,)	}
Plaintiff,	
against	
(GEORGE ROSE,)	
Defendants.	

The plaintiff complaining of the defendant above named by (*James Kent*), her attorney, shows to the Court as follows:

First: That on or about (*May 8, 1904*), the defendant above named received and collected to and for the use and benefit of the said plaintiff from (*the Mutual Life Insurance Company of New York*) the sum of (*fourteen thousand*) dollars (\$14,000) which said sum the defendant retains, and though duly demanded refuses to pay.

WHEREFORE the plaintiff demands judgment against the defendant for the sum of (*fourteen thousand*) dollars (\$14,000), with interest from (*May 8, 1904*), together with the costs of this action.

(JAMES KENT),
Plaintiff's Attorney,
(140 Nassau Street),
(*New York City*).

(Verification.)

* See *Sharp v. Rose*, 20 N. Y. Supp. 836; aff'd Ct. Appeals, 198 N. Y. 652. Under this form of action it is competent to prove that a person has money in his hands which belongs to another, no matter how he came into possession of it, and upon which he has no legal or equitable claim as against the true owner and which he has no right to hold as against the true owner.

Rent.

FORM No. 34.

For Instalment of Rent on a Lease.

(CITY COURT OF THE CITY OF NEW YORK.)

(VICKAR REALTY COMPANY,)

Plaintiff,

against

(MARKET NATIONAL BANK,)

Defendant.

The plaintiff above named, by its attorneys, (*Lindsay & Lindsay*,) complaining of the defendant, alleges:

I. That the plaintiff is (*a domestic corporation created by, existing and doing business under the laws of the State of New York, having its principal place of business in the Borough of Manhattan, City of New York,*) and was at all the times hereinafter mentioned the owner in fee of the premises known as (*No. 3 Park Place, in the Borough of Manhattan, City of New York.*)

II. (*Upon information and belief, that the defendant is a corporation created by and existing under the laws of the United States of America.*)

III. That on or about the (1st) day of (*May, 1902,*) plaintiff and defendant entered into a lease in writing whereby plaintiff leased and demised to the (*Market National Bank a portion of the ground floor*) of the premises, (*No. 3 Park Place,*) in (*the Borough of Manhattan, City of New York,*) for use as a (*banking office,*) therein more particularly bounded and described; that said letting was for a term of (*five (5) years*) to commence on the (*first*) day of (*May, 1902,*) and was upon the (*yearly*) rent of (*nine thousand (\$9,000) dollars, payable in equal (monthly) instalments on the first day of (each month in advance.)*)

IV. Upon information and belief, that on or about the (1st) day of (*May, 1902,*) the defendant entered into possession and enjoyment of the premises demised in said lease.

V. That the (*monthly*) instalment of rent under said lease for (*the month of January, 1905,*) is due and unpaid; although payment of the same has been duly demanded from the defendant, no part thereof has been paid to the plaintiff.

Death By Negligence.

Wherefore plaintiff demands judgment against the defendant for the sum of (*seven hundred and fifty*) dollars (\$750) with interest from the (1st) day of (*January*, 1905,) together with the costs and disbursements of this action.

(*LINDSAY & LINDSAY*,)

Attorneys for Plaintiff,

27 Pine Street,

New York City.

(Verification.)

FORM No. 35.

By Administrator for Damages for Negligently Causing Intestate's Death.

NEW YORK SUPREME COURT,
(*New York*) County.

(*SUSANNA BURT*), as administratrix
of the goods, chattels, and credits of
(*PERRY J. BURT*), deceased,
Plaintiff,

against

(*THE METROPOLITAN RAIL-
WAY COMPANY*),
Defendant.

The plaintiff, by (*Bosworth & Colson*), (*her*) attorneys, complaining of the defendant, alleges:

FIRST: Upon information and belief, that at all times herein mentioned the defendant was and now is a (*domestic*) corporation, duly created, organized and doing business under the laws of the State of (*New York*), and at all times herein mentioned operated a surface street railroad on and along Broadway, a public street in the city and county of New York, and moved and propelled cars thereon as a common carrier of passengers for hire.

SECOND: That on or about the (11th) day of (*October*, 1903), (*Perry J. Burt*), then a resident of the (*City and*) County of (*New York*), died intestate, and thereafter and on or about the 30th) day of (*October*, 1903), letters of administration upon the

Death By Negligence.

estate of the said deceased were duly issued to the plaintiff by the Surrogate of the County of (*New York*) and that she has duly qualified and is now acting as administratrix thereunder.

THIRD: That the said (*Perry J. Burt*) left him surviving, the plaintiff, (*his widow, and two children of the age of five and two years respectively.*)

FOURTH: Upon information and belief, that on or about the (*6th day of October, 1903*, the said *Perry J. Burt* boarded one of the defendant's cars on its said line of railway on Broadway, paid his fare and became a passenger of the defendant. That as the said car was approaching 23rd street, said *Perry J. Burt* gave a signal to the conductor thereof that he wished to alight at 23rd street, and the motorman of said car, in response to a signal from the conductor, brought said car to a stop; that thereupon the said *Perry J. Burt* attempted to alight from said car by the front platform and as he was so doing, and before he had an opportunity to step safely from said platform, the conductor of said car gave the usual two-bell signal to the motorman to start said car, and the motorman thereupon started said car suddenly without any notice to the said *Perry J. Burt*, and he was thereby violently thrown to the street and dragged by said car), and was so bruised, crushed and injured that he died at the time aforesaid.

FIFTH: That the death of the said (*Perry J. Burt*) was caused solely through the carelessness and negligence of the defendant, its servants and employees, and without any fault or negligence on his part in any way contributing thereto.

SIXTH: That by reason of the premises, plaintiff, as administratrix, as aforesaid, has sustained damages in the sum of (*twenty-five thousand*) dollars (\$25,000).

WHEREFORE, the plaintiff demands judgment against the defendant for the sum of (*twenty-five thousand*) dollars (\$25,000), together with the costs of this action.

(*BOSWORTH & COLSON,*)

Plaintiff's Attorneys,

30 Pine Street,

Borough of Manhattan,

New York City.

*(Verification.)

For Negligence — Against Employer.

FORM No. 36.

Complaint for negligence against employer.

NEW YORK SUPREME COURT,
County of (New York).

(IRVING R. KELLOR,) }
Plaintiff, }
against }
(NEW YORK LIGHTING COM- }
PANY,) }
Defendant. }

The plaintiff above named, by (*Sharpe & Keene*) his attorneys, complaining of the defendant above named, alleges:

FIRST: Upon information and belief, that the defendant is and at all the times hereinafter mentioned was, a domestic corporation.

SECOND: That on the (8th) day of (November, 1902,) and for some time prior thereto, this plaintiff was in the employ of the defendant.

THIRD: That on the said (8th) day of (November, 1902,) while in the employ of the defendant, this plaintiff was required in the course of such employment, to, and did, assist and participate in certain work then being performed by the defendant on (42nd Street, between 5th and 6th Avenues, in the Borough of Manhattan, City and County of New York, in and about the furnishing of electric light by the defendant in a building on the northerly side of said street.)

FOURTH: That on said (8th) day of (November, 1902,) while so engaged in the work and employment as aforesaid, this plaintiff without any contributory fault or negligence on his part, and solely by reason of the negligence and fault of the defendant, sustained and suffered serious and permanent injuries and loss, of the nature more fully hereinafter set forth.

FIFTH: That during such employment and work as aforesaid, (a piece of metal or steel, being a part of a steel drill or metal appliance then being used by the defendant in and about said work, was driven into the right eye of this plaintiff and permanently destroyed the sight thereof, and permanently impaired and weak-

For Negligence — Against Employer.

ened the plaintiff's other eye, and tore, wounded and permanently maimed, scarred and disfigured the right side of plaintiff's face.)

SIXTH: Upon information and belief that the injuries sustained by this plaintiff as aforesaid, resulted solely from the negligence of the defendant in not furnishing proper, sufficient and safe tools, machinery, and appliances in and about said work in which it employed this plaintiff, and in wrongfully and negligently furnishing and causing to be used in lieu thereof tools, machinery and appliances which were improper, insufficient, and unsafe, in employing incompetent, inefficient workmen in and about said work, and in causing and directing the said work to be performed in a negligent, improper and dangerous manner.

SEVENTH: Upon information and belief that the defendant was negligent in that the superintendent, who at the time said injuries were received by the plaintiff was entrusted by the defendant with the superintendence of the work at which the plaintiff was then engaged, and who was then exercising such superintendence and whose sole or principal duty was that of superintendence, and who was then acting as such superintendent, with the authority or consent of the defendant, his employer, negligently caused the said work to be done in an improper, hasty, careless and reckless manner, and thereby unreasonably exposed this plaintiff to danger and caused him to suffer the injuries and loss herein more fully set forth.

EIGHTH: That by reason of the premises aforesaid the plaintiff has been caused and will permanently be caused much pain and suffering, and has permanently injured (*scarred and disfigured his right eye, and has permanently and wholly lost the sight thereof, and the left eye of the plaintiff and the sight thereof has been weakened and impaired,*) and as plaintiff is informed and believes, will be permanently weakened, and continue to become weakened and impaired (*until the sight thereof is lost and plaintiff will be totally blind, and the right side of his face has been torn, and wounded,*) and will be permanently maimed, scarred and disfigured.

NINTH: That by reason of the premises and the injuries received by the plaintiff through the negligence of the defendant as aforesaid, this plaintiff was (*confined in a hospital for a period of two weeks,*) has since required and as he is informed and believes, will continue to require considerable medical attendance and treatment, and has been and will be prevented from pursuing his busi-

For Negligence — Against Railroad.

ness or rendering services or labor as heretofore, and was otherwise greatly injured, all to his damage in the sum of (*Twenty Thousand*) Dollars (\$20,000.)

TENTH: That within 120 days after the said injuries were sustained by this plaintiff, and on or about the (3rd) day of (*March*, 1903,) notice was duly given to and served upon the defendant, of the time, place and cause of such injuries, pursuant to and in accordance with the statute in such cases made and provided.

WHEREFORE, plaintiff demands judgment against the defendant herein for the sum of (*Twenty thousand*) Dollars (\$20,000,) together with the costs and disbursements of this action.

(*SHARPE & KEENE*.)

Attorneys for Plaintiff,

Office & P. O. Address,

(*27 William Street*,

Borough of Manhattan,

New York City.)

(Verification.)

FORM No. 37.

For Negligence Against Railroad.

SUPREME COURT OF THE STATE OF NEW YORK,
(*New York*) County.

(*LORETTE VERRAULT*.)

Plaintiff,

against

(*THE METROPOLITAN STREET
RAILWAY COMPANY*.)

Defendant.

The plaintiff complains of the defendant and states her cause of action as follows:

First: The defendant is a domestic street railway corporation duly organized under the laws of the State of (*New York*) and

The plaintiff charter in the year (1899), operated and maintained of the above upon various streets and avenues in the (*City of belief*:)

 For Negligence — Against Railroad.

Second: On or about the (6th) day of (August, 1899), this plaintiff was a passenger on the line of railway owned and operated by the defendant on (Eighth Avenue) in the (City of New York, Borough of Manhattan), and duly paid her fare as such passenger to the defendant, and was traveling as such passenger on said railway.

Third: That the plaintiff while such passenger, as aforesaid, (intended to leave said car at 87th Street. After the said car had stopped at said street, and while attempting to get off said car, and while one foot of the plaintiff was upon the ground, and her other foot upon the step of said car, the conductor of said car negligently signalled the motorman of said car to go ahead, which he did), and this plaintiff, without any fault upon her part, and while using proper care and caution (to alight from said car, was thrown violently therefrom to the ground, and in falling) sustained serious and painful injury (to her left hip).

Fourth: That by reason of such injury, caused wholly by the negligence of the defendant as aforesaid, this plaintiff was (confined many weeks in Saint Luke's Hospital, New York City), and suffered great bodily pain and mental anguish, and had to undergo prolonged and painful treatment (in said hospital) for said injury. That said injury was (a fracture of the neck of the femur bone of the left leg) of this plaintiff, and the same is permanent in its nature, and ever since said injury the plaintiff has been (unable to walk, except with the aid of crutches, and she) will never, as (she) is informed and believes, (be able to again walk without the aid of crutches), to her great injury and damage.

Fifth: That by reason of such injury, caused wholly and entirely by the negligence of the defendant, as aforesaid, this plaintiff was obliged to and did incur large expense and to pay out and expend large sums of money for her treatment (in said hospital) and for medical treatment (after she left said hospital), and she will be obliged, as long as she may live, to incur expenses and to pay out and expend large sums of money for medical attendance and treatment for the said injury.

Sixth: That by reason of her said injury, and the pain and suffering this plaintiff has been obliged to undergo, and as such injury is permanent, the pain and suffering that she will be obliged to undergo during her lifetime, and as she must¹ believes, after incur necessarily large sums of money for me¹ and treatment, she has been and will be injured¹ in the sum of (fifty thousand) dollars.

 Personal Injuries — Against Municipality.

WHEREFORE, this plaintiff demands judgment against the defendant for the sum of (*fifty thousand*) dollars besides the costs of this action.

(HOWARD HARGREAVES),
 Plaintiff's Attorney,
 (221 Broadway),
 (New York City).

(Verification.)

NOTE. (Form No. 38.)

Consult Laws 1907, chapter 677. And in cases against New York City arising out of injuries to personal property or destruction thereof by reason of negligence or nuisance by said city or any department board, officer, agent or employee, the action must be commenced within one year after the cause of action accrues and notice of intention to commence such action and of the time when and place where, the damages were incurred or sustained, together with a verified statement must be filed with the Comptroller within six months after the cause of action shall have accrued. The giving of such notice and filing of such statement at least thirty days before commencement of action must be alleged in the complaint.

 FORM No. 38.

Complaint Against Municipality for Personal Injuries.

NEW YORK SUPREME COURT,
 (Kings) County.

(JANE McNALLY),	}
Plaintiff,	
against	
(THE CITY OF NEW YORK),	
Defendant.	

The plaintiff by (*her*) attorney, (*George Taylor*), complains of the above named defendant and alleges (*upon information and belief*:)

Personal Injuries — Against Municipality.

First.—That the defendant is, and at all times hereinafter mentioned was, a municipal corporation existing under the laws of the State of New York.

Second.—That notice of the intention to commence such an action as the present, and of the time and place where the injuries hereinafter mentioned were received,* was duly filed by this plaintiff with the (*Comptroller*) of the (*City of New York*) and the counsel to the corporation within six months after the cause of action herein accrued, and before the commencement of this action, and that this action was commenced within (*one year*) after such cause of action accrued.

Third.—That on or about the (*14th*) day of (*August, 1907,*) this plaintiff presented the claim on which this action is founded to the (*Comptroller*) of (*the City of New York*) in writing for adjustment, and that thereafter he refused or neglected for more than (*thirty*) days before the commencement of this action to make an adjustment or payment thereof, although same was duly demanded.

Fourth.—That the street known as (*Seabreeze Avenue, near the junction of said street and West 5th Street*) in the (*Borough of Brooklyn, in the City of New York,*) at the times hereinafter mentioned was a much traveled thoroughfare and the sidewalks thereof were in constant use by citizens of said defendant and others.

Fifth.—That at and before the (*12th*) day of (*May, 1907,*) the defendant, disregarding its duty, negligently and carelessly permitted the sidewalk upon said (*Seabreeze Avenue near the junction aforesaid*) to be improperly and dangerously constructed and to be and remain in an unsafe and dangerous condition in that (*the flagging thereon was broken in many pieces, and there existed between flags abrupt breaks or descents owing to certain of said flags having sunken,*) of all of which defendant had notice.

Sixth.—That on or about the said (*12th*) day of (*May, 1907,*) as plaintiff was passing on said sidewalk in the usual way, using all due care without fault or negligence on (*her*) part, but solely owing to the defendant's negligence as aforesaid, (*she*) was (*precipitated into said break in said sidewalk.*)

Seventh.—That solely by reason of defendant's negligence as aforesaid, plaintiff was injured, bruised and wounded, so that (*she*) became sick, sore and disabled, and so remains, and has ever since been and will for a long time to come be prevented from

 Against Innkeeper — Loss Of Baggage.

attending to (*her*) business and has necessarily expended sums of money in endeavoring to be cured of her injuries, to plaintiff's damage (*ten thousand five hundred (10,500)*) dollars.

WHEREFORE, plaintiff demands judgment against the defendant for the sum of (*ten thousand five hundred*) dollars, together with the costs and disbursements of this action.

(*GEORGE TAYLOR,*)

Attorney for plaintiff,

(*27 Pine St., Manhattan Boro.,*)

(*New York City.*)

(Verification.)

FORM No. 39.

Against Hotel for Loss of Baggage.

SUPREME COURT OF THE STATE OF NEW YORK,
(*Kings*) County.

(*CLARA FREEMAN,*)

Plaintiff,

against

(*MANHATTAN HOTEL COMPANY,*)

Defendant.

The plaintiff, above named, by (*Sheldon Montgomery, her*) attorney, complaining of the defendant, alleges:

First: That at all the times hereinafter mentioned defendant was and still is (*a domestic corporation duly organized and existing under the laws of the State of New York*), and was at all times hereinafter mentioned in possession of, and the manager and keeper of, a common inn or hotel in (*the Borough of Manhattan, City of New York*) for the entertainment of travelers and transient persons as guests, known as (*Hotel Belmore*).

Second: That on or about the (*20th*) day of (*September, 1903*), the plaintiff was received by the defendant into said (*Hotel Belmore*) as a traveler and transient guest, together with (*her*)

Against Innkeeper — Loss Of Baggage.

baggage, to wit: (*a trunk*), and following named article therein contained and of the value stated, to wit:

(*List of contents with value.*)

The property of the plaintiff of the value of (*two thousand and sixty*) dollars (\$2,060).

Third: That on or about the 23rd) day of (*September, 1903*), the plaintiff remaining and being at said (*Hotel Belmore*) as such guest, and the said above-enumerated property being then in the special care and custody and charge of the defendant as landlord and keeper of said common inn or hotel, with directions where to deliver same to the plaintiff, the said defendant and its servants and employees so negligently and carelessly conducted themselves with regard to said baggage and property of the plaintiff that the same, by and through the carelessness and negligence of the defendant and its servants and employees and (*by the permission and direction of the defendant, was removed from said hotel to some place unknown to the plaintiff,*) and defendant failed and refused to deliver same to the plaintiff upon (*her*) demand therefor, and the said baggage and property became thereby wholly lost to the plaintiff to her damage in the sum of (*two thousand and sixty*) dollars (\$2,060).

Wherefore, the plaintiff demands judgment against the defendant for (*two thousand and sixty*) dollars (\$2,060), together with the costs of this action.

(*SHELDON MONTGOMERY,*)

Plaintiff's Attorney,

(*100 Broadway,*)

(*Manhattan, New York City.*)

(*Verification.*)

Upon Account Stated.

FORM No. 40.

Upon Account Stated.

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(<i>WILLIAM THOMPSON</i> ,)	}
Plaintiff,	
against	
(<i>FREDERICK SMITH</i> ,)	
Defendant.	

The plaintiff above named by his attorney (*William Reilly*), complains of the above-named defendant, and respectfully shows to this court:

I. That on the (*first*) day of (*May*, 1903), at the (*Borough of Manhattan, city of New York*), an account was stated between the plaintiff and the defendant; and upon such statement a balance of (*nine hundred dollars*) was found to be due from said defendant to this plaintiff.

II. That the defendant then and there agreed and promised to pay said sum.

III. That no part thereof had been paid.

WHEREFORE, plaintiff demands judgment against the defendant for the sum of (*nine hundred dollars*), with interest from the (*first*) day of (*January*, 1904), together with the costs and disbursements of this action.

(*WILLIAM REILLY*),
Attorney for Plaintiff,
(*27 Pine Street*),
(*Manhattan Borough*),
(*New York City*).

(Verification.)

On Promissory Note — Payee Against Maker.

FORM No. 41.

On Promissory Note. Payee Against Maker.

(CITY COURT OF THE CITY OF NEW YORK).

(JOHN JONES,)	}
Plaintiff,	
against	
(JOHN DOE,)	
Defendant.	

The plaintiff above named, by his attorney (*William Reilly*), complains of the above-named defendant, and respectfully shows to this court:

1. That heretofore, on or about the (*first*) day of (*June* 1902), defendant made and delivered to plaintiff his promissory note in writing, dated on that day, wherein and whereby he promised to pay to the plaintiff, or his order, at (*No. 27 Pine street, Borough of Manhattan, City of New York*), the sum of (*one thousand dollars (\$1,000)*) *six* months after said date.

2. That no part of said note has been paid, and that plaintiff is now the holder and owner thereof.

WHEREFORE, plaintiff demands judgment against the defendant for the sum of (*one thousand dollars (\$1,000)*), together with interest from the (*first*) day of (*January*, 1903), and the costs of this action.

(*WILLIAM REILLY*),
Plaintiff's Attorney,
(*27 Pine Street*),
(*Manhattan Borough*),
(*New York City*).

(Verification.)

On Promissory Note — Payee Against Maker.

FORM No. 42.

On Promissory Note. Payee Against Maker, Setting Forth Copy of Note.

(CITY COURT OF THE CITY OF NEW YORK.)

(JOHN JONES,)

Plaintiff,

against

(JOHN DOE,)

Defendant.

The plaintiff above named, by his attorney (*Daniel G. Williams* Reilly), complains of the above-named defendant, and respectfully shows to this court:

1. That heretofore or about the (*first*) day of (*June*, 1902), the defendant made and delivered to the plaintiff his promissory note in writing, of which the following is a copy:

(" \$1,000.00

New York, June 1, 1902.

" Six months after date I promise to pay to the order of John Jones, the sum of one thousand dollars, at 27 Pine street, Manhattan Borough, New York city.

" Value received.

JOHN DOE."

2. That no part of said note has been paid, and there is now due the plaintiff thereon from the defendant, the sum of (*one thousand dollars* (\$1,000)), with interest from the (*first*) day of (*January*, 1903), which the plaintiff claims.

WHEREFORE, plaintiff demands judgment against the defendant for the sum of (*one thousand dollars* (\$1,000)), with interest from the (*first*) day of (*January*, 1903), together with costs and disbursements of this action.

(WILLIAM REILLY),

Plaintiff's Attorney,

(27 Pine Street),

(Manhattan Borough),

(New York City).

On Promissory Note — Payee Against Maker And Indorser.

FORM No. 43.

On Promissory Note. Payee Against Maker and Indorser.

(CITY COURT OF THE CITY OF NEW YORK.)

(JOHN JONES),	}
Plaintiff,	
against	
(RICHARD ROE) and (JOHN DOE),	
Defendants.	

The plaintiff above named, by his attorney (*William Reilly*), complains of the above-named defendants, and respectfully shows to this court:

I. That heretofore the defendant (*John Doe*), made his promissory note in writing, dated on the (1st) day of (*March*, 1904), at (*New York City*), and thereby promised to pay to the order of the defendant (*Richard Roe*), the sum of (*one thousand* (\$1,000)) dollars (*sixty* (60) *days*) after said date.

II. That the defendant (*Richard Roe*), thereafter and before maturity of said note, for value indorsed and delivered the same to this plaintiff who is now the owner and holder thereof.

III. That at maturity, said note was duly presented for payment and payment thereof then and there demanded, but the same was not paid, of all of which due notice was given to defendant (*Richard Roe*),

IV. That no part of said note has been paid;

WHEREFORE, plaintiff demands judgment against defendants for the sum of (*one thousand* (\$1,000)) dollars, together with interest thereon to the (1st) day of (*May*, 1904,) and the costs of this action.

(WILLIAM REILLY),
 Plaintiff's Attorney,
 (No. 27 Pine Street),
 (Borough of Manhattan),
 (City of New York).

(Verification.)

In Foreclosure — Long Form.

NOTE.

(Form 43.)

Only foreign bills of exchange and perhaps notes with foreign indorsement need be protested. It is usually done in all cases for convenience of the plaintiff at the trial. (*Section 923, Code Civ. Proc.*) For this purpose the States are deemed foreign to each other.

FORM No. 44.

In Foreclosure — Long Form.

NEW YORK SUPREME COURT,
(*New York*) County.

(COMMERCE BANK OF NEW
YORK,)

Plaintiff,

against

(JOHN W. McKEE,) and others,
Defendants.

The above-named plaintiff, by (*White & Curtin*,) its attorneys, respectfully shows to this court and alleges:

First: That at all the times hereinafter mentioned *it* was and now is (*a domestic corporation created by and existing under the laws of the State of New York.*)

Second: Upon information and belief that the defendant *John W. McKee*, for the purpose of securing the payment to the plaintiff, *its successors, legal representatives* and assigns of the sum of *eighteen thousand* (\$18,000) dollars, lawful money of the United States, with interest thereon, did, on or about the *27th* day of *August*, 1897, execute and deliver to the plaintiff a bond bearing date on that day, and sealed with his seal, whereby he bound himself, his heirs, executors and administrators in the penal sum of *thirty-six thousand* (\$36,000) dollars, lawful money as aforesaid, upon the condition that the same should be void if the said obligor, his heirs, executors or administrators should well and truly pay, or cause to be paid, unto the said plaintiff, its successors, legal representatives or assigns, the just and full sum first mentioned

In Foreclosure — Long Form.

above, to wit: the sum of *eighteen thousand* (\$18,000). dollars, on the *first* day of *January*, 1902, and also interest thereon to be computed from the *first* day of *October*, 1897, at the rate of *six* per centum per annum, payable *semi-annually* on the *30th* day of every *June* and *December* from and after the date thereof until the aforesaid principal sum has been paid in full and satisfied.

Third: That the bond contained an express agreement that in case any default should be made in the payment of the said interest or in any part thereof on any date whereon the same is made payable, as above expressed, and should remain unpaid and in arrears for the space of *thirty* days or in case any tax or assessment upon the premises described in the mortgage executed to secure said obligation and delivered therewith as hereinafter set forth should remain unpaid and in arrears for the space of *ninety* days after the same should become due and payable, then the entire principal sum secured by said bond should forthwith without notice or demand be and become due and payable, if the said plaintiff, *its successors*, legal representatives or assigns should elect to receive same, together with the interest that shall accrue thereon, even though the time thereon limited for the payment thereof should not then have expired, anything in said bond to the contrary thereof in anywise notwithstanding.

Fourth: That as collateral security for the payment of the said indebtedness said defendant *John W. McKee* and his wife, *Katharine D. McKee* did, on or about the *27th* day of *August*, 1897, duly execute and deliver to the plaintiff a mortgage wherein and whereby they granted, bargained, sold and conveyed unto the said plaintiff, *its successors*, legal representatives and assigns forever the following described premises, together with all and singular the tenements, hereditaments thereto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and also all the estate, right, title, interest, possession, claim and demand whatsoever as well in law as in equity of the said mortgagors by, in and to the same and every part and parcel thereof with the appurtenances, together with the right to take or receive such rents or profits as thereafter mentioned, that is to say:

(Description.)

That said mortgage was duly acknowledged by said *John W. McKee* and proved as to said *Katharine D. McKee* on the *5th* day of *October*, 1897, and duly recorded in the office of the

In Foreclosure — Long Form.

Register of the City and County of New York in Liber 22 of mortgages, section 10, page 285, on the 6th day of October, 1897, at one o'clock 20 minutes P. M.

Fifth: That the said mortgage contained the further covenant and agreement that in case of any such default in payment as aforesaid, that then and from thenceforth it should be lawful for the said plaintiff, *its successors*, legal representatives or assigns, and it or they were thereby authorized and empowered to grant, bargain, sell and dispose of all and singular the premises thereby granted or any and every part thereof at public auction in the manner prescribed by law and to make, seal, execute and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple, absolute; and out of the money arising from such sale, to retain the amount of principal and interest which should then be due and owing on the said bond according to the condition thereof, together with all the costs and charges of advertisement and sale of the said premises and any amount or amounts paid for insurance, taxes, assessments, water rents, or charges as therein mentioned and interest thereon, rendering the overplus of the purchase money (if any there should be) unto the said mortgagors, their heirs or assigns on demand, which sale so to be made should forever be a perpetual bar both in law and equity against the said mortgagors, their heirs and assigns and all other persons claiming or to claim the said premises or any part thereof by, from, or under them or any or either of them.

Sixth: That the said mortgage contained the further mutual covenant and agreement that the said mortgagors, their heirs or assigns, should, during all the time until the said principal and interest money secured by said mortgage should be fully paid and satisfied, cause the building or buildings now erected or which might thereafter be erected on the therein described premises, to be and should keep the same insured in such amount as the said plaintiff, *its successors*, legal representatives or assigns might demand against loss or damage by fire, in and by some solvent incorporated insurance company or companies of good standing, to be designated and approved by the said plaintiff, *its successors*, legal representatives or assigns; and should assign the policy or policies of such insurance to the said plaintiff, *its successors*, legal representatives or assigns as a further and collateral security for the payment of the said money; and in case the said mortgagors, their

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heirs or assigns should omit to keep said building or buildings so insured and cause the policy or policies of insurance to be assigned as aforesaid, that then and in that case it should and might be optional for the said plaintiff, its successors, legal representatives or assigns to insure the same for the purposes aforesaid against loss by fire in its or their own name or otherwise and keep the same insured in such incorporated insurance company or companies and for such amount as it or they may see fit; and any premiums paid by the said plaintiff, its successors, legal representatives or assigns for such insurance, together with interest thereon should be a lien on the above-described premises and be secured by the said bond and the said mortgage; and on any such default by the said mortgagors, their heirs or assigns in making or renewing any such insurance, the whole principal sum and interest money aforesaid, if not already due and payable, and any amount so paid for insurance at the time of or after such default, any interest thereon, should thereupon and thereafter, at the election of the said plaintiff, its successors, legal representatives or assigns become and be due and payable without any further or other notice.

Seventh: That the said mortgage contained the further agreement that should the said plaintiff, its successors, legal representatives or assigns by reason of any such policy of insurance as aforesaid, receive any sum or sums of money for damages by fire to the said building or buildings, such amount might be retained and applied by it or them toward payment of the amount thereby secured or, at the option of the said plaintiff, its successors, legal representatives or assigns the same might be paid over either wholly or in part to them the said mortgagors, their heirs or assigns to enable them to repair said buildings or to erect new buildings in their place or for any other purpose or object, satisfactory to the said plaintiff, its successors, legal representatives, or assigns without affecting the lien of the said mortgage for the full amount secured thereby before such damage by fire or such payment took place.

Eighth: And the said mortgagors, for themselves, their heirs and assigns did further covenant and agree until full payment of the amount secured in said mortgage, to bear, pay and discharge as soon as the same might become due and payable all taxes, water rents, charges and assessments which might be imposed by law upon the said mortgaged premises or any part thereof and in default thereof after the expiration of *ninety* (90) days after the

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same should have become due and payable that it should then be lawful for the said plaintiff, its successors, legal representatives or assigns to pay the amount of any such tax, water rents, charge or assessment with any expenses attending the same; and any amount so paid the said mortgagors for themselves, their heirs and assigns did further covenant and agree to pay to said plaintiff, its successors, legal representatives or assigns with interest thereon, and that the same should be a lien on the said premises and be secured by the said bond and mortgage; and that the whole amount thereby secured, if not then due, should, if the plaintiff, its successors, legal representatives or assigns so elect, become and be due and payable forthwith.

All of which covenants, clauses and agreement will more fully appear by reference to said bond and mortgage in possession of the plaintiff, to which for greater certainty we beg leave to refer.

Ninth: That the defendants and each of them have failed to comply with the condition of said bond and mortgage by omitting to pay the principal sum secured thereby amounting to (*eighteen thousand*) (\$18,000) dollars, which by the terms and conditions of said bond and mortgage became due and payable on (*January first, 1902, excepting only the sum of three thousand* (\$3,000) *dollars on account of said principal sum paid on or about July 25, 1899.*) That there is now justly due and owing to the plaintiff upon the said bond and mortgage the sum of *fifteen thousand* dollars (\$15,000), with interest thereon to be computed from *December 30, 1902*, at the rate of *six per centum per annum*.

Tenth: That plaintiff is still the lawful owner and holder of said bond and mortgage.

Eleventh: That the defendants (*Frederick Charles Dickinson* and *Arthur Henry Dickinson*) are infants over the age of fourteen years and reside with their mother and testamentary guardian, the defendant, (*Katharine D. McKee*;) that all the other defendants are natural persons and of full age.

Twelfth: That no proceedings have been had at law or otherwise, and that no action has been brought to the knowledge or belief of the plaintiff for the recovery of the said sum secured by the said bond and mortgage or for the recovery of said mortgage debt or any part thereof.

Thirteenth: That the defendants and each of them have or claim to have some interest in or lien upon the said mortgaged premises or some part thereof, which interest or lien, if any, has

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accrued subsequently to the lien of the mortgage to foreclose which this action is brought.

WHEREFORE, the plaintiff demands judgment that the defendants and each of them and all persons claiming under them or either or any of them subsequent to the commencement of this action, and every person whose conveyance is subsequent or subsequently recorded, may be barred and foreclosed of all right, title, claim, lien and equity of redemption in the said mortgaged premises; that the said mortgaged premises or so much thereof as may be sufficient to raise the amount due to the plaintiff for all sums paid for insurance, taxes and assessments, and also for principal, interest and costs, and which may be sold in parcels without material injury to the parties, may be decreed to be sold according to law, and out of all the moneys arising from the sale thereof, the plaintiff may be paid the amount due on said bond and mortgage, with interest to the time of such payment, and costs and expenses of this action so far as the amount of such moneys properly applicable thereto will pay the same; that the officer making such sale be directed to pay from the proceeds thereof all taxes, assessments and water rates, which are liens on the property sold; that a receiver of the said mortgaged premises be forthwith appointed for the benefit of the plaintiff with all the powers of receivers in such actions; that the defendant, *John W. McKee*, may be adjudged to pay any deficiency which may remain after applying all of said moneys so applicable thereto; and that the plaintiff may have such other and further relief or both in the premises as shall be just and equitable.

(*WHITE & CURTIN*,)

Attorneys for Plaintiff,
Office and Post Office Address,
(No. 140 Broadway,
Borough of Manhattan,
New York City.)

(Verification.)

In Foreclosure — Short Form.

FORM No. 45.

Complaint for Foreclosure of a Mortgage — Short Form.

SUPREME COURT,
County of (*New York*).

(*JOHN BROWN*,)
Plaintiff,
against

(*JOHN JONES*,) (*EDWARD JEN-*
KINS) and (*GEORGE THOMAS*,)
Defendants.

The plaintiff by this complaint, respectfully states to this court upon information and belief, that the defendant (*John Jones*) for the purpose of securing the payment to (*John Brown*), the plaintiff, of the sum of (*ten thousand* (\$10,000)) dollars, with interest thereon on or about the (*first*) day of (*July*), one thousand nine hundred and (*one*), made, executed and delivered to said (*John Brown*,) the plaintiff, a bond bearing date on that day, sealed with (*his*) seal, whereby (*he*) bound (*himself, his*) heirs, executors and administrators in the penalty of (*twenty thousand*) (\$20,000) dollars, upon condition that the same should be void if the said defendant, (*his*) heirs, executors or administrators should pay to the said (*John Brown, his*) heirs, executors, administrators or assigns the said sum of money first above mentioned, as follows:

(*\$10,000 on the first day of July, 1902, and the interest thereon to be computed from July 1, 1901, at the rate of 5% per annum, and to be paid semi-annually until the aforesaid principal sum should be paid*), and as collateral security for the payment of the said indebtedness, the said defendant (*John Jones*) on the same day, made, executed, duly acknowledged and delivered to the said plaintiff, (*John Brown*), a mortgage whereby (*he*) granted, bargained, and sold to the said plaintiff (*John Brown*) the following described premises, with the appurtenances thereto, that is to say:

(*Description.*)

with a proviso in substance the same as the condition of the said bond, and with power and authority in case of default in the pay-

In Foreclosure — Short Form.

ment of the said sum of money, or any part thereof, or of the interest thereon to the said plaintiff, (*John Brown*,) or assigns, to sell the said mortgaged premises in due form of law, and out of the moneys arising from the sale thereof, to pay the said sum of money and interest, with the costs and expenses of the proceedings thereupon, rendering the overplus, if any, to the said mortgagor.

And the plaintiff further states that the said mortgage was duly recorded in the office of the (*Register*) of the county of (*New York*), on the (*2d*) day of (*July*), one thousand nine hundred and (*one*), in Liber (*23*) of Mortgages, page (*60*), and indexed under (*Block No. 3355*);

And the said plaintiff further states that the said defendant ha(s) failed to comply with the condition of the said bond and mortgage, by omitting to pay the sum of (*ten thousand* (\$10,000) dollars, which became due and payable on the (*1st*) day of (*July*), one thousand nine hundred and (*two*), there is now justly due to the plaintiff upon the said bond and mortgage the sum of (*ten thousand*) dollars and interest from the (*1st*) day of (*July*, 1901), and the plaintiff further states that no other action or proceeding has been had at law or otherwise, to (*his*) knowledge or belief, for the recovery of the said sum secured by the said bond or mortgage or any part thereof.

And the plaintiff further say(s) that (*he*) (*is*) informed and believes and therefore states that the defendants, (*Edward Jenkins, and George Thomas, or some of them*), have or claim to have some interest in, or lien upon, the said mortgaged premises or some part thereof, which interest or lien, if any has accrued subsequently to the lien of the said mortgage,

The plaintiff therefore demands that the defendants and all persons claiming under (*them*) subsequent to the filing of a notice of the pendency of this action, in the office of the clerk of the county in which the said mortgaged premises are situated, may be barred and foreclosed of all right, claim, lien and equity of redemption in the said mortgaged premises; that the said premises may be decreed, to be sold according to law; that the moneys arising from the sale may be brought into court; that the plaintiff may be paid the amount due on the said bond and mortgage, with interest to the time of such payment, the expenses of the sale, and the costs and expenses of this action, so far as the amount of such moneys properly applicable thereto will pay the same; and that

In Replevin.

the defendant (*John Jones*) may be adjudged to pay any deficiency which may remain, after applying all of said moneys so applicable thereto; and that the plaintiff may have such other or further relief or both, in the premises as shall be just and equitable.

(*DE FOREST BRYCE*.)

Plaintiff's Attorney,
Office and Post Office address,
(35 Nassau street,
(N. Y. City.)
(Manhattan.)

(Verification.)

FORM No. 46.

Complaint — In Replevin.

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(*HOFFMAN HOUSE, NEW
YORK*.)

Plaintiff,

against

(*MANHATTAN STORAGE AND
WAREHOUSE COMPANY*) and
MARY MARTIN, impleaded,
Defendants.

- Plaintiff above named, complaining of the defendants, for a complaint, herein respectfully shows to this court and alleges:

I. That the plaintiff is and at all times herein mentioned was (*a. domestic corporation organized and existing under and by virtue of the laws of the State of New York, and upon information and belief that the defendant, the Manhattan Storage and Warehouse Company, is and at all the times herein mentioned was a domestic corporation organized and existing under and by virtue of the laws of the State of New York*).

In Replevin.

II. That the plaintiff is and at all times herein mentioned and at the time this action was commenced was the lawful owner of a certain chattel, to wit, (*an oil painting entitled "Spring"*) of the value of about *one thousand* (\$1,000) dollars, and is and at all the times herein mentioned and at the time of the commencement of this action was entitled to the immediate possession thereof.

III. On information and belief that (*the business of the defendant, the Manhattan Storage and Warehouse Company, is and at all the times herein mentioned was that of a storage and warehouse keeper, and that the said chattel, the property of the plaintiff, was placed in the possession of said defendant, the Manhattan Storage and Warehouse Company, and stored with it as a storage and warehouse keeper by one Mary Martin, or her agents or servants*), and at the time of the commencement of this action, was wrongfully kept and retained by the defendant (*the Manhattan Storage and Warehouse Company*), from the plaintiff herein as an agent or bailee of (*said Mary Martin*) or her agents and servants and as her or their property. On information and belief that said (*Mary Martin*) claims to be the owner of said chattel.

IV. On information and belief that on or about the (*13th*) day of (*January, 1902*), and previous to the commencement of this action, said chattel was duly demanded from said (*Manhattan Storage and Warehouse Company*), but said (*Manhattan Storage and Warehouse Company*) refused to deliver it to the plaintiff herein.

Wherefore, plaintiff demands judgment against the defendants for the possession of said chattel and adjudging that the plaintiff is the owner and entitled to the possession thereof, and for such other and further relief as to the court may seem just and proper, together with the costs of this action.

(ARNOLD GREEN),

Attorney for Plaintiff,

Office and Post Office Address,

(170 Broadway),

(Borough of Manhattan),

(New York City, N. Y.)

(Verification.)

In Replevin — Unlawful Detention.

FORM No. 47.

Complaint in Replevin. Unlawful Detention.

SUPREME COURT OF THE STATE OF NEW YORK,
(*New York*) County.

(<i>BURTON BROWN</i> ,)	}
Plaintiff,	
against	
(<i>RICHARD RICE</i> ,)	
Defendant.	

Plaintiff above named by his attorney (*Henry Rogers*), complaining of the defendant above named, alleges:

I.

That at the time of the commencement of this action and on or before the (*5th*) day of (*December, 1904*), plaintiff was and still is the owner of and entitled to the immediate possession of the article mentioned in Schedule "A" hereto annexed and made a part of this complaint; that said chattels were on the (*5th*) day of (*December, 1906*), and still are of the value of (*two thousand*) dollars.

II.

That the defendant has become possessed of and wrongfully detains from the plaintiff the articles mentioned in said Schedule "A."

III.

That before the commencement of this action plaintiff duly demanded of the defendant that he return said chattels to plaintiff, but he has failed and refused to do so, to plaintiff's damage in the sum of (*five hundred*) dollars.

WHEREFORE plaintiff demands judgment against the defendant for the possession of said articles mentioned in Schedule "A" hereto annexed or for the sum of (*two thousand*) dollars in case possession thereof cannot be given to plaintiff; and for the further

In Replevin.

from him to plaintiff's damage in the sum of (*two hundred and fifty*) dollars (\$250).

WHEREFORE, plaintiff demands judgment against the defendant for the possession of the said (*stock certificate*) or the sum of (*ten thousand*) dollars (\$10,000) in case possession thereof cannot be given to plaintiff, and for the sum of (*two hundred and fifty*) dollars (\$250) damages, together with the costs of this action.

(*ROBERT SIMPSON*),

Plaintiff's Attorney,

(60 Wall) Street,

(*Borough of Manhattan*),

(*New York City*).

(Verification.)

FORM No. 49.

Complaint in Replevin.*

SUPREME COURT,

County of (*New York*.)

(*JOHN MARTIN*),

Plaintiff,

vs.

(*WILLIAM LEWIS*),

Defendant.

The plaintiff above named complains of the defendant and alleges:

I. The plaintiff, at all times hereinafter mentioned, was and still is the lawful owner and entitled to the immediate possession

* "Where the complaint, in an action brought to recover possession of chattels, alleges that the defendant 'has concealed, removed or disposed of said chattels so that they cannot be found or taken by the sheriff under the requisition issued to him herein, and with intent that the same should not be so found or taken,' and such allegation is proved upon an inquest on the defendant's default, and is incorporated in the decision, an execution against the person of the defendant may be issued in the event of the return unsatisfied of an execution against his property, notwithstanding that no order of arrest was granted in the action."—*Lehman v. Mayer*, 68 App. Div. 12.

In Replevin.

of (37 cases of leaf tobacco known as Connecticut leaf tobacco), of which an inventory is hereto annexed, marked Schedule "A," and forming part of this complaint.

II. The said chattels were on (June 2, 1896), and still are of the value of (\$3,000).

III. That on and prior to (June 2, 1896), plaintiff, as such owner, stored the said chattels in the warehouse of Rush & Mason in the City of New York, in his own name, and thereupon negotiable warehouse receipts therefor were delivered to plaintiff. The defendant wrongfully claimed to be the owner of said chattels, instructed the said Rush & Mason to refuse a delivery of said tobacco to plaintiff, and on said June 2, 1896, and prior to the commencement of this action, plaintiff duly demanded from said Rush & Mason a return and delivery of said chattels, and said Rush & Mason, acting under said instructions of the defendant and as his agent, refused to deliver the said chattels to plaintiff. But thereupon the defendant wrongfully detained and caused to be wrongfully detained all of the said chattels, and that he does still wrongfully detain the same from plaintiff.

IV. Thereafter the defendant surreptitiously and without notice to plaintiff took the said chattels into his actual possession, and said defendant has concealed, removed or disposed of said chattels so that they cannot be found, or taken by the sheriff under the requisition issued to him herein, and with intent that the same should not be so found or taken.

WHEREFORE, the plaintiff demands judgment against the defendant for the delivery of all of the aforesaid chattels, together with (\$2,000) damages for the wrongful detention thereof, or if the delivery of said chattels cannot be made, for the sum of (\$3,000), the value of said chattels, together with the sum of (\$2,000) damages for the wrongful detention thereof, besides the costs and disbursements of this action.

(WERNER & ENGLAND),

Attorneys for Plaintiff,

(31 Liberty Street),

(New York City).

(Verification.)

SCHEDULE "A."

An inventory of thirty-seven cases of leaf tobacco, known as the Connecticut leaf tobacco, each case being designated by a

Affidavit.

number marked on the outside thereof, and having the gross weight of the contents of the case and the tare also marked on the outside thereof, and having thereon the mark " M " in a diamond, the said cases being marked by number, gross weight and tare, respectively, as follows:

<i>No. of Case.</i>	<i>Gross Weight.</i>	<i>Tare.</i>
516	1455	194
517	1450	196
518	1418	185

FORM No. 50.

Affidavit on Replevin and Requisition.*

NEW YORK SUPREME COURT,
(*New York*) County.

(JOHN JONES,)	}
Plaintiff,	
against	
(JOHN DOE,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(JOHN JONES), being duly sworn, says that he is the plaintiff in this action; that he is the owner of and lawfully entitled to the immediate possession of the following chattels claimed in this action, that is to say: two automobiles, touring cars, Panhard make, 1905 model, with Limousine body, 40-horse power and complete equipment.

That the above-named plaintiff has brought this action in this court against the defendant by the issuance of a summons, a copy whereof is hereto annexed, to recover the possession of said chattels. That said summons has not yet been served, and this affidavit is made to accompany said summons.

* Foregoing form is intended for a case where the affidavit is made at the time of issuing the summons.

Affidavit — Requisition.

That the said chattels are wrongfully detained from the plaintiff by (*John Doe*), the defendant herein. That the alleged cause of the detention thereof, according to deponent's best knowledge, information and belief, is as follows:

(Defendant claims a lien upon said property by reason of work done upon other chattels of the same kind heretofore placed in his hands by plaintiff and since returned by him, alleging that the above-mentioned chattels were delivered to him under a single continuing contract, which allegation your deponent denies.)

That the said chattels have not been taken by virtue of a warrant against the plaintiff, for the collection of a tax, assessment or fine, issued in pursuance of a statute of the State or of the United States, nor have same been seized by virtue of an execution or warrant of attachment against the property of the plaintiff, or of any person from or through whom the plaintiff had derived title to said chattels since the seizure thereof, and that the actual value of said property, according to the best knowledge and belief of deponent, is (*eight thousand*) dollars (\$8,000).

(*JOHN JONES.*)

Sworn to before me, this }
(24th day of (*July*, 1904). }

(*EDWARD SMITH,*)

Notary Public,

New York County, No. 20.

To (*Mitchell L. Erlanger*), Esq., sheriff of the County of (*New York*):

You are hereby required to replevy the chattels described in the above affidavit.

Dated, (*New York, July 24, 1904*).

(*WILLIAM SIMPSON,*)

Attorney for Plaintiff,

Office and Post-Office Address,

(*11 Wall Street,*)

(*New York City*).

Undertaking.

FORM No. 51.
Undertaking in Action to Recover Chattel.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES,</i>)	}
Plaintiff,	
against	
(<i>JOHN DOE,</i>)	}
Defendant.	

WHEREAS (*John Jones*), the plaintiff in this action has made an affidavit that the defendant (*John Doe*) wrongfully detains certain personal property in said affidavit mentioned, of the value of (*eight thousand* (\$8,000)) dollars, and the plaintiff claims the immediate delivery of the said personal property to him, as provided for by Chapter XIV of the Code of Civil Procedure.

NOW, THEREFORE, in consideration of the taking of said property or any part thereof by the sheriff of the County of *New York*, by virtue of the said affidavit and the requisition thereupon indorsed, we, the undersigned (*John B. Taylor*), of (*No. 122 West First street, Borough of Manhattan, City of New York*), and (*Charles T. Furman*), of (*No. 134 East Fourth street, Borough of Manhattan, City of New York*), and (*John Jones*), of (*No. 116 West Seventieth street, Borough of Manhattan, City of New York*), do hereby jointly and severally undertake and become bound to the defendant in the sum of (*sixteen thousand* (\$16,000) dollars) for the prosecution of the action by the plaintiff, in the (*New York Supreme Court*); against the defendant, for the return to the defendant of the said property if possession thereof is adjudged to him, or if the action abates or is discontinued before the said property is returned to the said defendant, and for the payment to the defendant of any sum which the judgment awards to him against the plaintiff.

Dated (*New York, July 24, 1904*).

(*JOHN B. TAYLOR.*)
(*CHARLES T. FURMAN.*)
(*JOHN JONES.*)

Undertaking.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JOHN B. TAYLOR*), one of the sureties named in and subscribers to the foregoing undertaking, being duly sworn, says:

That he is a resident and *free* holder in this State, and is worth the sum of (*thirty-two thousand* (\$32,000)) dollars over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

(*JOHN B. TAYLOR.*)

Signed and sworn to before me, }
this (*24th*) day of (*July*), 1904. }

(*EDWARD SMITH*),

Notary Public,

(*New York*) County, No. (20).

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*CHARLES T. FURMAN*), one of the sureties named in and subscribers to the foregoing undertaking, being duly sworn, says:

That he is a resident and *free* holder in this State, and is worth the sum of (*thirty-two thousand* (\$32,000)) dollars over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

(*CHARLES T. FURMAN.*)

Signed and sworn to before me,
this *24th* day of *July*, 1904.

(*EDWARD SMITH*),

Notary Public,

(*New York*) County, No. (20).

VERIFICATION.

NOTE.

I. Where a pleading is verified, each subsequent pleading must be verified, except (generally speaking)

(1) A demurrer.

(2) General answer of an infant by his guardian *ad litem*.

(3) Answer in libel or slander.

(4) Answer in divorce.

(5) Where party pleading can be privileged from testifying, as a witness (this exception, however, does not extend to a fraud on creditors nor affect the property right of others).

Pleading must be verified:

II. Where it is desired to enter judgment by default without application to the court. (Under section 1213, Code.)

III. Service is by publication.

IV. Where it is desired to use the pleading as an affidavit.

V. (Answer) to prevent inquest for the want of an affidavit of merits.

VI. Complaint against joint-debtors in an action under section 1938, Code.

By Party — One Of Several Parties.

FORM No. 52.

Verification — By Party.*

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*JOHN JONES*), being duly sworn, deposes and says:

That he is the (*plaintiff*) herein; that he has read and knows the contents of the foregoing (*complaint*), and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

(*JOHN JONES.*)

Sworn to before me, this }
 (*fourth*) day of (*June*, 1904). }

(*FANNIE SCHULTZ*),
 Notary Public, No. (30),
 (*New York*) County.

FORM No. 53.

Verification — By One of Several Parties.

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*JOHN JONES*), being duly sworn, says, that he is one of the (*plaintiffs*) herein; that he has read the foregoing (*complaint*) and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, he believes it to be true.

(*JOHN JONES.*)

Sworn to before me, this }
 (*4th*) day of (*June*, 1904). }

(*FANNIE SCHULTZ*),
 Notary Public, No. (30),
 (*New York*) County.

* There is no difference in the form of a verification, whether the party making, act as an individual or in a representative capacity, as an executor, administrator, trustee, receiver, assignee for benefit of creditors, etc.

By Attorney Or Agent.

not made by the (*plaintiff*) and is made by the deponent is that the said (*plaintiff*) is not within the County of (*New York*), the county where deponent has his office.

(*FRANK WILSON.*)

Sworn to before me, this }
(21st) day of (*June*, 1907). }

(*ELI SMITH*),

Notary Public, No. (31),

(*New York*) County.

FORM No. 60.

Verification — By Attorney or Agent — Reason: Party Incapable.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JOHN JONES*), being duly sworn, says:

That he is one of the attorneys of the (*plaintiff*) in this action, and resides at (*No. 121 West 11th street, in the City and County of New York*); that he has read and knows the contents of the foregoing (*complaint*), and that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true. Deponent further says that the grounds of his belief as to all matters therein not stated upon his knowledge are as follows:

(“*That he has in his possession the promissory notes mentioned in the complaint, and letters from the plaintiff, and letters from defendant acknowledging the defendant’s liability thereon, and of the notarial certificate of demand and notice of protest given to defendant upon the non-payment of said notes at maturity.*”)

Deponent further says that the reason why this verification is not made by said plaintiff is that said plaintiff is not capable of making this verification, by reason of the fact that said plaintiff is now confined to his house, suffering from severe illness, and under the advice of physicians cannot be seen.

(*JOHN JONES.*)

Sworn to before me, this }
(fourth) day of (*June*, 1904). }

(*FANNIE SCHULTZ*),

Notary Public, No. (30),

(*New York*) County.

 By Attorney Or Agent.

FORM No. 61.

Verification — When Action is Founded upon Written Instrument for the Payment of Money — In Possession of Attorney.

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*JOHN JONES*), being duly sworn, says:

That he is one of the attorneys of the (*plaintiff*) herein; that he has read and knows the contents of the foregoing (*complaint*), and that the same is true to the knowledge of the deponent, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes to be true; that this action is founded upon a written instrument for the payment of money only, now in deponent's possession, which instrument is the source of deponent's information, and the grounds of his belief.

(*JOHN JONES.*)

Sworn to before me, this }
 (*fourth*) day of (*June*, 1904). }

(*FANNIE SCHULTZ*),

Notary Public, No. (30),

(*New York*) County.

FORM No. 62.

Verification — By Attorney Where All the Material Allegations are Within His Personal Knowledge.

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*JOHN JONES*), being duly sworn, says:

That he is one of the attorneys for the (*plaintiff*) herein; that he has read and knows the contents of the foregoing (*complaint*), and that the same is true to the knowledge of the deponent, and that all the allegations in the complaint are within the personal knowledge of the deponent.

(*JOHN JONES.*)

Sworn to before me, this }
 (*fourth*) day of (*June*, 1904). }

(*FANNIE SCHULTZ*),

Notary Public, No. (30),

(*New York*) County.

Notice As To Defective.

Note.— The usual practice where a pleading is served without a sufficient verification is to return the pleading within twenty-four hours with a notice indorsed thereon similar to the following:

FORM No. 63.

Notice as to Defective Verification.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JAMES KAY,</i>)	}
Plaintiff,	
against	
(<i>WILLIAM TAYLOR,</i>)	
Defendant.	

SIR:

PLEASE TAKE NOTICE that the within (*answer*) is hereby returned to you and that plaintiff elects to treat the same as a nullity on the ground that it is served without a copy of a sufficient verification (*in that the affidavit annexed thereto and purporting to be a verification is not signed and not sworn to.*)

(*FRANK BUSH,*)

Attorney for (*plaintiff.*)

(*32 Liberty Street,*
New York City.)

Dated, (*New York, March 10, 1907.*)

To

(*WALLACE McCUE,*)

Attorney for (*defendant.*)

SECURITY FOR COSTS.

NOTE.

Application for security for costs must be made promptly, usually before answering. But it may be entertained at any time in the discretion of the court if facts excusing the delay are made to appear:

Security for costs may be required in special proceedings as well as in actions. (*Sec. 3279, Code.*)

It must appear that *all* the plaintiffs are non-residents. (*Sec. 327, Code.*)

In the City Court of the city of New York it must affirmatively appear that the plaintiff has no place of business in the boroughs of Manhattan and Bronx. (46 *Misc.* 419.)

For complete discussion as to what proof of non-residence may be presented, see

Abbott's Practice and Forms, p. 666.

FORM No. 64.

Order Requiring Security for Costs — Non-resident.

(CITY COURT OF THE CITY OF NEW YORK.)

(PHILIP PHOENIX, Plaintiff, against (VERNON VERMILYEA,) Defendant.	}
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On reading and filing the affidavits of (*Vernon Vermilyea*), verified the (19th) day of (*March, 1907*), and (*Robert Reeves*), verified the (16th) day of (*March, 1907*), and on motion of (*Lorillard Lewis*), attorney for the defendant,

ORDERED, that the plaintiff, within five days after service of a copy of this order upon his attorney, pay into court the sum of \$250, to be applied to the payment of costs, if any, awarded against him, or in lieu thereof file with the clerk of this court an

Affidavit.

undertaking executed to the defendant by one sufficient surety that such surety will pay to the defendant, upon demand, all costs which may be awarded to him in this action, not to exceed the sum of two hundred and fifty dollars (\$250), and also within said five days serve upon the attorney for the defendant a written notice of such payment or of the filing of such undertaking, and

FURTHER ORDERED, that all proceedings on the part of the plaintiff herein, except to review or vacate this order, are hereby stayed until the payment of said sum or the filing of such undertaking and notice thereof, and the allowance of such undertaking, and

FURTHER ORDERED, that the time of the defendant to answer, demur, or otherwise move with reference to the complaint herein, be extended until (*six*) days after the terms of this order have been complied with.

Dated New York, (*March 19, 1907.*)

(JOSEPH I. GREEN,
(C. C. J.)

FORM No. 65.

Affidavit to Obtain Order for Security for Costs.

(CITY COURT OF THE CITY OF NEW YORK.)

(PHILIP PHOENIX,) }
Plaintiff,
against

(VERNON VERMILYEA,) }
Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(VERNON VERMILYEA, being duly sworn, says:

That he is the defendant herein; that this action was commenced against deponent by the service of a summons and complaint on the (*15th*) day of (*January, 1907,*) and deponent has appeared herein by (*LORILLARD LEWIS,*) his attorney; that deponent's time to answer herein will expire on the (*21st*) day of (*January, 1907.*)

Affidavit.

Deponent further says that at the time of the commencement of this action the plaintiff was and still is a non-resident of the State of New York, and has no place for the regular transaction of business in the Boroughs of Manhattan and Bronx in the city of New York, but is a resident of the State of (*New Jersey*); that the plaintiff (*has a house in Montclair, N. J., where he has actually lived and had his residence for the past five years, and has during said time been employed as a traveling salesman by the Excelsior Paint Company, whose place of business is at 96 Water street, Borough of Manhattan, New York city; that said plaintiff has paid taxes on both real and personal property in Montclair, N. J., for the past five years, and has also been a registered voter in said village,*) all of which facts as to the residence of said plaintiff more fully appear by the affidavit of (*Robert Reeves*), verified the (17th) day of (*March, 1907,*) hereto attached.

(*VERNON VERMILYEA.*)

Sworn to before me, this
(17th) day of (*March, 1907.*)

(*DELPHIN DALTON*),

Notary Public,

(*N. Y.*) County.

AFFIDAVIT OF MERITS.

FORM No. 66.

Affidavit of Merits, by Party.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i>),	}
Plaintiff,	
against	
(<i>JOHN DOE</i>),	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JOHN DOE*), being duly sworn, says:

That he is the defendant in the above-entitled action; that he has fully and fairly stated the case to (*Alexander Duffield*), his counsel herein, who resides at No. (203 *East 190th*) street, in the (*Borough of Manhattan, city of New York*), and that he has a good and substantial defense on the merits to the action, as he is advised by his said counsel after such statement and verily believes to be true.

(*JOHN DOE*.)

Sworn to before me, this }
(*first*) day of (*May*, 1902). }

(*RICHARD ROE*),

Notary Public,
(*New York*) County (No. (2)).

Note.— Affidavit by one of several parties is sufficient.

By Counsel.

FORM No. 67.

Affidavit of Merits, by Counsel.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i> ,)	}
Plaintiff,	
against	
(<i>JOHN DOE</i> ,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.: 1

(*ALEXANDER DUFFIELD*), being duly sworn, deposes and says:

That he is the attorney and counsel for the above-named defendant (*John Doe*), retained to defend this action, and resides at (*58 Fifth avenue, Manhattan, New York City*), and that said defendant has fully and fairly stated the facts of the case to deponent, and after such statement of the case in this action made to deponent by said defendant (*John Doe*), deponent verily believes that defendant has a good and substantial defense upon the merits to the cause of action set forth in the complaint.

That the reason that this affidavit is not made by the defendant is that the defendant is at present in (*Cleveland, Ohio*), and it will be impossible to obtain in time, an affidavit from him.

(*ALEXANDER DUFFIELD*.)

Sworn to before me, this }
(*first*) day of (*May*, 1902). }

(*RICHARD ROE*),

Notary Public,
(*New York*) County (No. (2)).

EXTENSION OF TIME.

FORM No. 68.

Stipulation Extending Time to Plead.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES,</i>)	}
Plaintiff,	
against	
(<i>JOHN DOE,</i>)	
Defendant.	

It is hereby stipulated that time for the defendant to answer,* demur or to make any motion with relation to the complaint in this action, be and hereby is extended to and including the (15th) day of (*May*, 1904) (*the issue of said action to date as if no extension had been granted.*)**

Dated (*May 2nd*, 1904).

(*WILLIAM REILLY*),
Attorney for Plaintiff,
15 *William Street*,
Manhattan, New York City.

* "To demur or make any motion with relation to the complaint" is sometimes omitted.

** It has been held in the First Department that a provision in such a stipulation to the effect that issue is to remain as if no extension had been granted is not binding on the court, and although this form is commonly used, it is a risk to give an extension with this condition therein, as the opposing counsel may, in violation of his stipulation, move to strike the case from the calendar, after considerable lapse of time, and thus cause great delay.

Note. — When the time to plead has been extended by stipulation or order for twenty days, two days notice of the application for an order extending time must be given to adverse party. Rule 24, Gen. Prac. Rules.

To Plead — Affidavit.

FORM No. 69.

Affidavit to Obtain Extension of Time to Plead.

NEW YORK SUPREME COURT,
(*New York*) County.

(JOHN JONES,)	}
Plaintiff,	
against	
(JOHN DOE,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(JOHN DOE), being duly sworn, says:

I. That he is the defendant in the above-entitled action.

II. That he has fully and fairly stated the facts in this case to (THEODORE WILLIAMS), his counsel herein, who resides at No. (22 West 41st street), in the (*Borough of Manhattan, City of New York*), and that he has a good and substantial defense on the merits as he is advised by his said counsel after such statement and verily believes.

III. That the cause of action set forth in the complaint is for breach of contract and the relief demanded is money damages.

IV. That he was compelled to leave the (*City of New York*), in which he resides, on business immediately after the service of the summons and complaint herein upon him on the (1st) day of (*July, 1904*); that he remained absent for (eighteen (18) days), and since his return he has not had sufficient time to instruct his counsel concerning his answer in this case, and that (ten (10)) days further time is necessary therefor; that the time to answer expires on the (20th) day of (*July, 1904*), and no extension of such time has been had or applied for.

Sworn to before me, this } (JOHN DOE.)
(19th) day of (*July, 1904*). }

(WILLIAM TYSON),

Notary Public,
(*New York*) County, No. (28).

To Plead — Affidavit.

FORM No. 70.

Affidavit to Obtain Extension of Time to Plead.

NEW YORK SUPREME COURT,
(*New York*) County.

(JOHN JONES,)

Plaintiff,

against

(JOHN DOE,)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(THEODORE WILLIAMS), being duly sworn, says:

I am one of the attorneys for the defendant in the above-entitled action, and I reside at No. (8 *East 64th street, Borough of Manhattan, City of New York*). The defendant above-named has fully and fairly stated the facts of the case to me, and after such statement to me made by said defendant, I verily believe that said defendant has a good and substantial defense upon the merits of the cause of action set forth in the complaint. The affidavit is made by me and not by the defendant, because said defendant (*is now in Albany, N. Y.*), and his affidavit cannot be obtained in time.

This action is brought to recover the sum of (\$5,000) damages for breach of contract.

The complaint herein was served on the defendant on (*December 1, 1906*), and defendant has appeared by (*Percy & Williams*), his attorneys. (*Mr. John R. Percy, who has had charge of this case and has made a special investigation of the transactions and circumstances involved for the purpose of preparing an answer, has been actually engaged in court constantly for the past five days, and by reason of such engagements and the press of other professional matters requiring his immediate attention will be unable to prepare and serve an answer herein before December 21, 1906, when defendants time to answer expires. The facts and circumstances out of which this case arose cover transactions and*

To Plead — Order.

correspondence of a period of several years, and no one in my office except Mr. Percy is sufficiently familiar with them to properly prepare an answer.)

No extension of time to answer has been obtained herein and no previous application has been made for such extension. Deponent therefore asks that the time of the defendant (*John Doe*) to demur, answer or otherwise move with relation to the complaint be extended 20 days from the (21st) day of (*December, 1906*).

(THEODORE WILLIAMS.)

Sworn to before me, this {
(19th) day of (*December, 1906*). }
(ARCHER DUNN),
Notary Public.
(*New York*) County.

FORM No. 71.

Order Extending Time to Plead.

NEW YORK SUPREME COURT,
(*New York*) County.

<p>(JOHN JONES,) Plaintiff, against (JOHN DOE,) Defendant.</p>	<p style="font-size: 4em;">}</p>	<p>•</p> <p>•</p>
--	----------------------------------	-------------------

On the annexed affidavit of (*John Doe*), it is

ORDERED, that the defendant herein have (twenty (20)) days additional time in which to answer or to otherwise plead to the complaint herein, or make such motion as he may be advised.

Dated (*July 18, 1904*).

(WILLIAM COLFAX),
J. S. C.

MOTIONS RELATING TO PLEADINGS.

NOTE.

Motions to strike out irrelevant, redundant or scandalous matter must be made before demurring or answering the pleading, and within twenty days from the service thereof. And the time to make the motion cannot be extended unless at least two days' notice of the application therefor, stating the time and place thereof, be given the adverse party. The notice of motion must specify the precise parts which are to be stricken out and it is common practice to identify the matter by referring to the paragraph and by setting forth the objectionable part together with the words immediately preceding and immediately following. Procuring an order, extending time to answer, is a waiver of the right to move to strike out irrelevant matter, unless the right to make the motion is given by the order. And an answer, served after notice of motion to strike out irrelevant matter in the complaint, waives the motion. Such a motion cannot be combined with a motion for a bill of particulars even in the alternative. (118 *App. Div.* 830.)

The motion should be determined on an inspection of the pleadings.

FORM No. 72.

Order to Show Cause Why Matter Should Not Be Stricken Out as Irrelevant.

NEW YORK SUPREME COURT,
(*New York*) County.

(*RICHARD WILSON,*)

Plaintiff.

against

(*ROBERT GRANT & OTHERS,*)

Defendants.

On the summons and complaint herein, and on the annexed affidavit of (*Robert Grant,*) sworn to (*February 5, 1907,*) and on all the proceedings herein, it is

Order To Show Cause.

ORDERED, that the plaintiff or his attorney show cause at a Special Term of this court, to be held at (*Part I thereof*) at the County Court House in the County of (*New York*) on (*February 8, 1897*) at (10:30) o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, why paragraphs "8th," "9th," "10th" and "11th") and the following allegation in paragraph ("12th"):

(*"And was also being pressed for an accounting as executor and trustee of his father's estate as aforesaid."*)

of the (*complaint*) herein should not be stricken out as irrelevant, pursuant to the provisions of section 545 of the Code of Civil Procedure, why the time of the defendant (*Robert Grant*) to plead to the complaint herein, shall not be extended until (*five*) days after the hearing and determination of this motion, and the entry of the order thereupon, and why the defendant (*Robert Grant*) shall not have such other and further relief in the premises as to this court shall seem just and proper, including the costs of this motion, and special and sufficient reasons appearing therefor, it is

FURTHER ORDERED, that service of this order and of the said affidavit of (*Robert Grant*,) sworn to (*February 5, 1907*,) on the plaintiff's attorneys before (*February 6, 1907*,) shall be due and sufficient service thereof.

Dated, (*New York, February 6, 1907*.)

(*SAMUEL GREENBAUM*,)

Justice of the Supreme Court of the State of New York.

Affidavit.

FORM No. 73.

Affidavit on Motion to Strike Out Irrelevant Matter.

NEW YORK SUPREME COURT,
(New York) County.

(RICHARD WILSON,) }
Plaintiff,

vs.

(ROBERT GRANT) and OTHERS, }
Defendants.

STATE OF NEW YORK, }
County of (New York,) } ss.:

(Robert Grant,) being sworn, says: I am one of the defendants in the above-entitled action and reside at (202 West 12th street, in the County of New York.)

This action was commenced to (*set aside certain conveyances made by me to the defendant Rebecca Grant as fraudulent as against my creditors for an accounting and for an injunction with respect to the real estate transferred*) and for other relief.

The summons and complaint in this action were personally served on me on (December 28, 1906) and on the defendant (Rebecca Grant) on (January 2, 1907.)

I duly appeared herein by (Lyman A. Bolton), my attorney, on (December 31, 1906) and the defendant (Rebecca Grant) duly appeared herein by (Robert Emerson), her attorney, on (January 19, 1907).

A notice of pendency of this action was filed in the office of the clerk of the county of (New York) on (December 26, 1906). My answer has not been served as yet; neither has the answer of the defendant, (Rebecca Grant). My time to answer, demur or move in relation to the complaint herein, has been extended by stipulation to and including (February 11, 1907). The time of the defendant (Rebecca Grant) to answer, demur or move in relation to the complaint herein has been extended by stipulation to and including (February 11, 1907).

Affidavit.

I have fully and fairly stated the case herein to (*Lyman A. Bolton*), my counsel herein, who resides at No. (80 *East Washington Square in the Borough of Manhattan, City of New York*), and after making such statement as aforesaid, I am advised by my said counsel and verily believe that I have a good and substantial defense upon the merits of the cause of action alleged in the plaintiff's complaint or to some part thereof.

I am advised by my said counsel that the matters alleged in paragraphs (8th, 9th, 10th and 11th and the following allegation in paragraph 12, "*and was also being pressed for an accounting as executor and trustee of his father's estate as aforesaid,*" are redundant and irrelevant and tend to confuse the issue herein and render the complaint unduly voluminous, in that (*the allegations referred to apparently state a separate and distinct cause of action involving parties other than myself who are not made parties to this action*), that they are not germane to the issue and evidence thereunder will not be admissible upon the trial, and that I will be greatly prejudiced by the allegations if the same are permitted to remain in the complaint in that (*I cannot properly protect my rights in the premises in disproving said allegation in an action wherein the aforesaid persons are not parties.*)

I, therefore, respectfully pray this court for an order striking out paragraphs ("8th," "9th," "10th" and "11th" and the following allegation in paragraph 12th: "*and was also being pressed for an accounting as executor and trustee of his father's estate as aforesaid*") of the complaint herein, as irrelevant, pursuant to the provisions of section 545 of the Code of Civil Procedure.

An order to show cause why such relief shall not be granted, returnable in less than eight and in less than five days, is necessary for the reason that, unless an order to show cause be granted, this motion cannot be heard and determined prior to the expiration of my time to plead to the complaint herein and I am advised by my said counsel and verily believe that it will be necessary to have such motion heard and determined before I can properly plead to the complaint herein.

No extension of time to answer, demur or otherwise move in relation to the complaint herein has been granted, by stipulation or order except as hereinbefore stated.

Order.

No previous application for the annexed order to show cause has been made to this court, or to any justice thereof.

(*ROBERT GRANT.*)

Sworn to before me, this }
 (5th) day of (*February*, 1907.) }
 (*R. F. HODGE*),
 Notary Public,
 (*New York*) County.

FORM No. 74.

Order Striking out Allegations as Irrelevant.

At a Special Term of the Supreme Court of the State of New York, held at (*Part I*) thereof, at the County Court House in the County of (*New York*) on (*March 7*, 1907.)

PRESENT:

Hon. (*SAMUEL GREENBAUM*),
 Justice.

(*RICHARD WILSON*),
 Plaintiff,

vs.

(*ROBERT GRANT*) and OTHERS,
 Defendants.

A motion on behalf of the defendant, (*Robert Grant*), striking out as irrelevant, paragraphs "*eighth*," "*ninth*," "*tenth*," and "*eleventh*" and the following allegation of paragraph ("*twelfth*," "*and was also being pressed for an accounting as executor and trustee of his father's estate as aforesaid*") of the complaint herein, pursuant to the provisions of section 545 of the Code of Civil Procedure, and to extend the time of the defendant (*Robert Grant*) to plead to the complaint herein until (*five*) days after the hearing and determination of the motion and the entry of the order thereupon, coming on regularly to be heard upon an order
 —a show cause,

Order.

NOW, upon reading and filing the said order to show cause, which bears date (*February 6, 1907,*) together with proof of due service thereof upon the attorneys for the plaintiff, the affidavit of (*Robert Grant,*) sworn to (*February 5, 1907,*) a copy of the complaint herein, read in support of said motion, and the said motion having been duly submitted by counsel for the respective parties, and due deliberation having been had thereupon, it is,

On motion of (*Lyman A. Bolton,*) Esq., the attorney for the defendant, (*Robert Grant,*)

ORDERED that the said motion be and the same hereby is granted to the extent of striking out paragraph ("*ninth,*" ("*tenth*" and "*eleventh*") of the complaint and the words "*as aforesaid*" at the conclusion of paragraph ("*twelfth*") of the complaint; and it is further

ORDERED that paragraphs ("*ninth,*" "*tenth*" and "*eleventh*") of the complaint and the words ("*as aforesaid*") at the conclusion of paragraph ("*twelfth*") be and the same hereby are stricken out as irrelevant; and it is further

ORDERED that the time of the defendant (*Robert Grant*) to plead to the complaint herein be and the same hereby is extended until (*five*) days after the hearing and determination of this motion and the entry of the order thereupon; and it is further

ORDERED that the said motion otherwise be and the same hereby is denied.

Enter

(*S. G.,*)

J. S. C.

Notice Of Motion.

FORM No. 75.

Notice of Motion to Strike Redundant Matter in Pleading.

SUPREME COURT,
(*New York*) County.

(<i>EDWARD TINKER,</i>)	}
Plaintiff,	
against	
(<i>EVENING STAR PUBLISHING</i> <i>COMPANY,</i>)	
Defendant.	

Sir:

TAKE NOTICE that on the pleadings herein and the annexed affidavit of (*Paul Lawrence*), verified the (6th) day of (*November, 1903*), we shall move this court at a Special Term (*Part I*) thereof to be held in and for the County of (*New York*), at the County Court House, in the City of (*New York*), on the (11th) day of (*November, 1903*), at 10:30 o'clock in the forenoon or as soon thereafter as counsel can be heard, for an order striking out from the defendant's answer to the complaint the following portions thereof as redundant and irrelevant, to wit:

(*Paragraph I., the whole thereof.*)

(*Paragraph V., the following allegation, viz. (quote):*

Together with the costs of this motion.

Dated (*New York, November 6th, 1903.*)

Yours, etc.,

(*PAUL LAWRENCE,*)

Attorney for Plaintiff,

(*31 Nassau street,*)

(*Borough of Manhattan,*)

(*New York City.*)

To (*Clarence Jones,*)

Attorney for Defendant.

Affidavit.

FORM No. 76.

Affidavit on Motion to Strike Out Redundant Matter in Pleading.

SUPREME COURT,
(*New York*) County.

(<i>EDWARD TINKER,</i>)	}
Plaintiff,	
against	
(<i>EVENING STAR PUBLISHING</i> <i>COMPANY,</i>)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*Paul Lawrence,*) being duly sworn, deposes and says: That he is the attorney for the plaintiff herein.

That this action was commenced on the (*14th*) day of (*July*, 1903,) by the service of the summons and complaint, and that the time for the defendant to answer was extended by an order twenty days from the (*3d*) day of (*August*, 1903.) That said answer was served on the (*14th*) day of (*August*, 1903.)

That by order the time to serve an amended answer was extended twenty days from the (*5th*) day of (*October*, 1903,) and on the (*25th*) day of (*October*, 1903,) said amended answer was served.

That no previous application has been made for this order.

Sworn to before me, this
(*6th*) day of (*November*, 1903.)

(H. B. BRADLEY,)

Notary Public,

(*Kings*) County.Certificate filed in (*New York*) County.

Order.

FORM No. 77.

Order Striking Out Matter as Redundant and Irrelevant.

At a Special Term of the Supreme Court, (*Part I.*),
held in the County Court House, in the (*Borough*
of Manhattan,) city of (*New York*,) on the (*3d*)
day of (*December*, 1903.)

PRESENT:

Hon. (*JOHN PROCTOR CLARKE*),

Justice.

(*EDWARD TINKER*),

Plaintiff,

against

(*EVENING STAR PUBLISHING*
COMPANY),

Defendant.

A motion having been made by plaintiff for an order to strike out paragraphs (*I.*, *V.*, *VI.*, *VII.*, and *IX.*) of defendant's (*amended*) answer herein, on the ground that the allegations therein contained are irrelevant and redundant, and the motion having duly come on to be heard before me; upon reading and filing the notice of motion and affidavit of (*Paul Lawrence*), verified (*November 6th*, 1903,) and the pleadings herein filed in support of said motion; and after hearing (*Paul Lawrence*), Esq., counsel for (*plaintiff*), in favor of the motion, and (*Clarence Jones*), Esq., counsel for the defendant, in opposition thereto, and due deliberation having been had thereon;

NOW, on motion of (*Paul Lawrence*), attorney for the (*plaintiff*), it is

ORDERED, that paragraphs (*I.* and *VI.*) and paragraph (*V.*) in so far as it reiterates the allegations in paragraph (*I.*) with the exception of the denial that the publication was malicious, be and the same hereby are stricken from said (*amended*) answer, and that within (*ten*) days after the service of a copy of this order on defendant's attorney, defendant serve its amended answer in conformity with this order.

Enter,

(*J. P. C.*)

J. S. C.

Answer — Notice Of Motion.

FORM No. 78.

Notice of Motion to Make Answer More Definite and Certain and to Strike Out.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JAMES JERONS,</i>)	}
Plaintiff,	
against	
(<i>NEW YORK INSURANCE COM- PANY,</i>)	
Defendant.	}

Sirs:

PLEASE TAKE NOTICE that upon the (*amended*) complaint and (*amended*) answer in the above entitled action, and on all the proceedings heretofore had herein, we shall move this court at a Special Term, (*Part I, thereof,*) to be held at the County Court House in the County of (*New York,*) on the (*26th*) day of (*February,*) at (10:30) o'clock A. M., or as soon thereafter as counsel can be heard, for an order herein requiring the defendant to make more definite and certain the allegations constituting the so-called ("*second further and separate defense,*") in the defendants (*amended*) answer, to the (*amended*) complaint herein, by striking therefrom the allegations contained in the paragraph in said (*amended*) answer numbered (*III,*) and for such other and further relief as to the court shall seem just and proper in the premises.

Dated, (*New York, February 20, 1907.*)

Yours, etc.,

(*CARR & ROOME,*)

Attorneys for Plaintiff,

Office and Post Office Address,

(*59 Wall street,*)

(*Borough of Manhattan,*)

(*New York City.*)

To

(*JAMES HOOD,*)

Attorney for Defendant,

(*46 Broadway,*)

(*Borough of Manhattan,*)

(*New York City.*)

Answer — Order.

FORM No. 79.

Order Directing Answer to be Made More Definite and Certain and Striking Out.

At a Special Term (*Part I*,) of the Supreme Court,
held in the County Court House, in the County
of (*New York*) on the (*11th*) day of (*March*,
1907.)

PRESENT:

Hon. (*SAMUEL GREENBAUM*,)
Justice.

(<i>JAMES JERONS</i> ,)	}
Plaintiff,	
against	
(<i>NEW YORK INSURANCE COM- PANY</i> ,) Defendant.	

Plaintiff having moved this court at a Special Term (*Part I*,) thereof, held at the County Court House, in the County of (*New York*) on the (*26th*) day of (*February*, 1907,) for an order herein requiring the defendant to make more definite and certain the allegations constituting the so-called ("*Second, Further and Separate Defense*") in the defendant's (*amended*) answer to the (*amended*) complaint herein by striking out therefrom the allegations contained in the paragraph to said (*amended*) answer numbered (*III*,) and for such other and further relief as to the court might seem just and proper, and the said motion having duly come on to be heard,

And upon reading said (*amended*) complaint herein, verified the (*7th*) day of (*December*, 1906,) and the said (*amended*) answer herein verified the (*18th*) day of (*February*, 1907,) and upon reading and filing plaintiff's notice of said motion dated the (*20th*) day of (*February*, 1907,) read in support of the motion.

And after hearing (*Samuel Roome*,) Esq., in support of the motion, and (*James Hood*,) Esq., in opposition thereto, and due deliberation having been had,

Answer — Order.

NOW on motion of (*Carr & Roome*,) Esqs., attorneys for the plaintiff, it is

ORDERED that the said motion be and the same hereby is granted; and it is further

ORDERED that the defendant make more definite and certain the allegations constituting the so-called ("*Second, Further and Separate Defense*") in its (*amended*) answer to the (*amended*) complaint herein by striking out therefrom the allegations contained in the paragraph of said amended answer numbered (*III*); and it is further

ORDERED that the defendant have leave to serve an answer to the (*amended*) complaint herein, amended in conformity herewith within (*ten* (10)) days of the service of a copy of this order, with notice of entry thereof upon the defendant's attorneys; and it is further

ORDERED that the service of said amended answer be without prejudice to the proceedings heretofore had in this action and that the date of joinder of issue herein remain as of (*November 9, 1904.*)

Enter

(*S. G.*,)

Justice Supreme Court.

Complaint — Notice Of Motion.

FORM No. 80.

Notice of Motion to Make Complaint More Definite and Certain.

NEW YORK SUPREME COURT,
(*New York*) County.

(AMERICAN LIFE INSURANCE) COMPANY,)	Plaintiff,
against	
(JAMES DOBSON,)	Defendant.

Sir:

YOU WILL PLEASE TAKE NOTICE that on the complaint in the above-entitled action and the affidavit of (*Charles Arnold*,) verified the (26th) day of (*September*, 1906,) hereto annexed, a motion will be made by the defendant at a Special Term of this court to be held in (*Part I*) thereof, to be held in the County Court House in the County of New York on the (1st) day of (*October*, 1906,) at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order striking out as irrelevant and redundant certain matters hereinafter specified, contained in said complaint, and requiring that said complaint be made definite and certain by amendment in the particulars hereinafter specified, and requiring that the statement of the facts constituting the several causes of action therein alleged be separately numbered, that is to say:

I. That the complaint be made more definite and certain by amendment, so that it shall describe with common certainty (*each of the payments, etc.*) * * * and further, so that it shall appear from the complaint with common certainty (*which of the alternative allegations contained in said first and second causes of actions, etc.*)

And further, so that it shall appear from the complaint with common certainty, whether the said first and second causes of action are for

- A.
- B.
- C.
- D.

Complaint — Notice Of Motion.

That the statement of the facts constituting each such cause of action, upon which it is sought to hold the defendant responsible, be separate and numbered.

II. That the matter contained in paragraphs (36 and 38) of the complaint be stricken out as irrelevant and redundant.

And you will please further take notice that the defendant will then and there move for an extension of time to answer the complaint herein after the determination of this motion and the entry and service of an order thereon.

And you will please further take notice that the defendant will then and there move for such other and further relief in the premises as to the court may seem just and proper, and for the costs of said motion.

Yours, etc.,
(COURTLAND VANDINE,) (31 Liberty Street,)
Office and P. O. Address,
Attorney for Defendant,
(Borough of Manhattan,) (New York City.)

Dated, (New York, September 23, 1906.)

To (Paul Allen,) Attorney for Plaintiff.

Note.— This affidavit should show the condition of the cause and when defendant's time to answer will expire.

DEMURRERS.

NOTE.

A demurrer on the grounds stated in either subdivision 1, 2, 4 or 8 of section 488 of the Code is stated in the language of the Code, but if on the grounds mentioned in subdivision 3, 5, 6 or 7, the demurrer must point out specifically the particular defect relied upon.

Before Demurring Consider Whether.

1. To move to make complaint more definite or certain.
2. To move to strike out irrelevant, redundant or scandalous matter in the complaint.
3. To move to elect between pleas.
4. To move to separately state causes of action.
5. To move for security for costs.
6. To move to transfer to United States Court.

FORM No. 81.

Ground: That the Court has no Jurisdiction of the Person of this Defendant.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>WILLIAM WRIGHT,</i>)	}
Plaintiff,	
against	
(<i>THOMAS BOOKER,</i>)	
Defendant.	

The defendant above named, by his attorney (*Theodore Cæser*), demurs to the complaint herein upon the ground that it appears upon the face of the complaint,

That the court has no jurisdiction of the person of this defendant.

(*THEODORE CÆSER*),
Defendant's Attorney,
(*15 William Street, Borough of Manhattan*),
(*New York City*).

 No Jurisdiction Of Subject-Matter.

FORM No. 32.

Grounds: That the Court Has No Jurisdiction of the Subject-matter.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>WILLIAM WRIGHT,</i>)	}
Plaintiff,	
against	
(<i>THOMAS BOOKER,</i>)	
Defendant.	

The defendant above named, by his attorney (*Theodore Cæser*), demurs to the complaint herein upon the ground that it appears upon the face of the complaint

That the court has no jurisdiction of the subject of this action.

(*THEODORE CÆSER*),
Defendant's Attorney,
(*15 William Street, Borough of Manhattan*),
(*New York City*).

FORM No. 83.

Ground: That the Plaintiff has not Legal Capacity to Sue.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>WILLIAM WRIGHT,</i>)	}
Plaintiff,	
against	
(<i>THOMAS BOOKER,</i>)	
Defendant.	

The defendant above named, by his attorney (*Theodore Cæser*), demurs to the complaint herein upon the ground that it appears upon the face of the complaint,

 Another Action Pending.

That the plaintiff has not legal capacity to sue in that (add particular defect relied upon).

(THEODORE CÆSER),
 Defendant's Attorney,
 (15 William Street, Borough of Manhattan),
 (New York City).

FORM No. 84.

Ground: That there is Another Cause of Action Pending Between the Same Parties for the Same Cause.

NEW YORK SUPREME COURT,
 (New York) County.

(WILLIAM WRIGHT,)	}	Plaintiff,
against	}	
(THOMAS BOOKER,)	}	Defendant.

The defendant above named, by his attorney (*Theodore Cæser*), demurs to the complaint herein upon the ground that it appears upon the face of the complaint,

That there is another action pending between the same parties for the same cause.

(THEODORE CÆSER),
 Defendant's Attorney,
 (15 William Street, Borough of Manhattan),
 (New York City).

Misjoinder Of Parties.

FORM No. 85.

Ground: That there is a Misjoinder of Parties Plaintiff.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>WILLIAM WRIGHT</i>) and (<i>ED-</i> <i>WARD EASTON</i> ,)	} Plaintiffs, against (<i>THOMAS BOOKER</i> ,) Defendant.

The defendant above named, by his attorney (*Theodore Cæsar*), demurs to complaint herein upon the ground that it appears upon the face of the complaint that there is a misjoinder of parties plaintiff in that it appears by the complaint that the plaintiffs are not united in interest in any demand or demands alleged in said complaint to exist against the defendants; and that it appears by said complaint that the action is brought to recover upon alleged several demands, (*one in favor of the plaintiff (William Wright) and the other in favor of the plaintiff (Edward Easton), in neither of which several demands, existing in favor of each said plaintiffs, is the other plaintiff interested*).

(*THEODORE CÆSAR*),
Defendant's Attorney,
Office and P. O. Address,
(*No. 15 William Street*),
(*Borough of Manhattan*,
City of New York).

Defect In Parties.

FORM No. 86.

Ground: Defect in Parties Plaintiff or Defendant.
NEW YORK SUPREME COURT,
(New York) County.

(WILLIAM WRIGHT,)	}
Plaintiff,	
against	
(THOMAS BOOKER,)	
Defendant.	

The defendant above named, by his attorney (*Theodore Cæser*), demurs to the complaint herein upon the ground that it appears upon the face of the complaint:

I. That there is a defect of parties defendant in that the persons described in paragraph 5 of the complaint as "Other devisees therein named" are necessary defendants in the action and are not made parties.

II. That there is a defect of parties plaintiff or defendant, in that the persons described in paragraph 5 of the complaint as "Other devisees therein named" are necessary parties to the action, and are not made parties.

III. That there is a defect of parties defendant in that (*Charles B. Pierson*), as trustee under the will of (*Henry Pierson*), deceased, is a necessary defendant, and is not made a party.

IV. That there is a defect of parties plaintiff in that the person seized of the balance or remainder of the premises mentioned in the complaint, other than the parts alleged to be held by the plaintiff, are necessary parties plaintiff, and are not made parties plaintiff in the action.

V. That there is a defect of parties defendant in the omission as a party defendant of the person who purchased at the sale alleged in the said complaint.

VI. That there is a defect of parties defendant in that the plaintiff has not made (*Robert Mack*), who is a proper and necessary party to the cause of action alleged in said complaint, a party defendant herein.

(THEODORE CÆSER),
Defendant's Attorney,
(15 William Street, Borough of Manhattan),
(New York City).

Misjoinder Of Actions.

FORM No. 87.

Ground: That Several Causes of Action have been Improperly
United.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>WILLIAM WRIGHT</i> ,)	}
Plaintiff,	
against	
(<i>THOMAS BOOKER</i> ,)	
Defendant.	

The defendant above named, by his attorney (*Theodore Cæser*), demurs to the complaint herein upon the ground that it appears upon the face of the complaint:

That several causes of action have been improperly united, one being a claim for damages because of certain injuries to the plaintiff's person, and the second a claim to recover real property and damages for withholding the same.

That it appears upon the face of the complaint that said causes of action so united are inconsistent, do not belong to any one of subdivisions 1 to 9 of section 484 of the Code of Civil Procedure, and did not arise out of the same transaction or transactions connected with the same subject of action.

(*THEODORE CÆSER*),

Defendant's Attorney,
(*15 William Street, Borough of Manhattan*),
(*New York City*).

Misjoinder Of Actions.

FORM No. 88.

Demurrer — Ground: Misjoinder of Causes of Action.

NEW YORK SUPREME COURT,
(*Kings*) County.

(FRANK ROBINSON,)

Plaintiff,

against

(OLIVER BANGS) and (ALEX-
ANDER JOHNSON,)

Defendant.

The defendant (*Alexander Johnson*) hereby demurs to the complaint herein upon the ground that it appears upon the face of the complaint that causes of action have been improperly united therein, in that the action has been brought against two persons who are not severally liable upon the same written instrument, to wit: against the lessee named in the lease annexed to the complaint for breaches of said lease and the covenants thereof, and against the surety upon a separate instrument, viz.: a guaranty also annexed to said complaint, and in that it further appears upon the face of the complaint that the causes of action so united are inconsistent, do not belong to any one of subdivisions 1 to 9 of section 484 of the Code of Civil Procedure, do not affect all the parties to the action, did not arise out of the same transaction or transactions connected with the same subject of action.

(ROGERS RIVES),

Attorney for defendant (*Johnson*).

Office and Post-Office Address,

(62 Broadway, New York City).

Misjoinder Of Actions.

FORM No. 89.

Demurrer — Ground: Misjoinder of Causes of Action.

NEW YORK SUPREME COURT,
(*Tompkins*) County.

(<i>CHARLES RUDY</i>),	}
Plaintiff,	
against	
(<i>GEORGE MORE</i>) and (<i>LEE SMITH</i>),	
Defendants.	

The defendant (*George More*), separately and for himself, demurs to the complaint herein, and for the grounds of his demurrer states that it appears upon the face of the complaint that causes of action have been improperly united in the complaint, in that a cause of action for (*negligence in putting upon the market a gun constructed of such defective material and in such careless manner that it was unsafe for use*) has been joined with a cause of action for (*a breach of a warranty that said gun was properly constructed of good and safe material in every part, and would shoot black or nitro powder and not become loose*), and in that a cause of action in tort is improperly united with a cause of action upon contract as above specifically stated and it appears upon the face of the complaint that said causes of action are not consistent, do not both belong to any one of subdivisions 1 to 9 inclusive of section 484, Code of Civil Procedure, and did not arise from the same transaction or transaction connected with the same subject of action, and are not connected with the same subject of action.

(THOMPSON & COFF,)

Attorneys for Defendant (*More*),
(*Cayuga Bank Building*),
(*Ithaca, N. Y.*).

General.

FORM No. 90.

Ground: That the Complaint Does not State Facts Sufficient to Constitute a Cause of Action.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>WILLIAM WRIGHT</i> ,)	}
Plaintiff,	
against	
(<i>THOMAS BOOKER</i> ,)	
Defendant.	

The defendant above named, by his attorney (*Theodore Cæser*), demurs to the complaint herein upon the ground that it appears upon the face of the complaint:

That the complaint does not state facts sufficient to constitute a cause of action.

(*THEODORE CÆSER*),
Defendant's Attorney,
(*15 William Street, Borough of Manhattan*),
(*New York City*).

Several Grounds.

FORM No. 91.

Upon Several Grounds.

SUPREME COURT,
(New York) County.

(JAMES T. ROGERS,) as administrator of the estate of (CHARLES A. SMITH,) deceased,

Plaintiff,

against

(THE NATIONAL SUPPLY COMPANY,) of the city of New York, David Mitchell, as executor of the will of Marian Joyce, deceased, and individually, William S. Lamb, Charles N. Bedell, and Jean L. Burnett, co-partners as Lamb, Bedell & Burnett, and James F. Smith, as surviving partner of the firm of Joyce and Smith, and individually,

Defendants.

The defendant, (the National Supply Company of the City of New York), by its attorneys (Baker, Milton & Burns) demurs to the complaint herein upon the following grounds:

I.

FOR A FIRST GROUND OF DEMURRER.

That it appears upon the face of the complaint that the plaintiff has not legal capacity to sue because:

A. The cause of action against this defendant is founded upon the contract annexed to the complaint, which was made between the defendant, David Mitchell, as executor of the last will and testament of Marian Joyce, deceased, and the defendant, James F. Smith, surviving partner of Joyce and Smith, as parties of the first part, with this defendant, the National Supply Company of the city of New York, party of the second part, on or about July 12, 1890, at a time when the plaintiff's testator was dead, nor was

Several Grounds.

the said Charles A. Smith, deceased, nor the plaintiff herein a party to said contract.

B. *The action is founded upon the said contract annexed to the complaint, which was made after the dissolution of said firm of Joyce and Smith, by reason of the death of the said Marian Joyce, and by reason of the death of the said Charles A. Smith. The contract was made by the said James F. Smith, sole surviving partner of said firm, in the process of the collection of the assets of said firm, and was not a contract in which said firm as such was interested, nor was the said Charles A. Smith, deceased, interested in said contract during his lifetime or during the existence of said firm, and neither he nor the plaintiff, as his administrator, has any interest therein, nor has the plaintiff as such administrator any capacity to sue thereon as against this defendant.*

C. *If it be assumed that the cause of action is founded upon a contract or firm obligation of said firm of Joyce and Smith, that then the plaintiff, as administrator of said Charles A. Smith, deceased, a deceased partner, has no capacity to sue this defendant thereon, but that this suit can only be brought, if at all, by the surviving partner, James F. Smith, and it appears upon the face of the complaint that said surviving partner has brought a suit for similar relief, and that said suit has been settled by the giving of a release, as is alleged in the complaint, and it does not appear that said release has been set aside or cancelled.*

II.

FOR A SECOND GROUND OF DEMURRER.

That it appears upon the face of the complaint that there is a defect of parties plaintiff.

A. *If said suit is brought upon the contract annexed to the complaint, the parties of the first part to said contract, to wit, the said James F. Smith, as surviving partner, and the said David Mitchell, as executor of Marian Joyce, should be added as plaintiffs, and it does not appear why the said David Mitchell, as such executor, is made a party defendant herein, instead of being joined as a party plaintiff.*

B. *If said action is founded upon a partnership obligation of said firm of Joyce and Smith, it appears that the surviving partner of said firm, the said James F. Smith, should be added as a party plaintiff herein.*

Several Grounds.

III.

FOR A THIRD GROUND OF DEMURRER.

That it appears upon the face of the complaint that causes of action have been improperly united, for the reason that

A. A suit by the present plaintiff, as administrator of a deceased partner, for an accounting of partnership matters as against the surviving partner, James F. Smith, and as against David Mitchell, the executor of Marian Joyce, another deceased partner, is joined with,—

B. A suit against this defendant, *The National Supply Company*, and against the defendant, *Charles N. Bedell*, which suit is based upon the contract annexed to the complaint, which contract was made by said surviving partner after the dissolution of said firm, and which contract relates to the collection of the assets thereof, and which contract was made after the death of the said *Charles A. Smith*, deceased.

IV.

FOR A FOURTH GROUND OF DEMURRER.

That it appears upon the face of the complaint that the complaint does not state facts sufficient to constitute a cause of action.

(BAKER, MILTON & BURNS),
Attorneys for Defendant,
(*National Supply Company of
the City of New York*),
27 William Street,
(*New York City*).

DEMURRERS TO ANSWERS.

When the answer demands affirmative relief the form of demurrer must follow. Section 495 of the Code. Where no affirmative relief is demanded, the form of demurrer is under section 494 of the Code, on the ground of insufficiency in law. (1 App. Div. 222; 128 N. Y. 45.)

The two following forms, Nos. 92 and 93, are to be used to demur to either new matter by way of defense, or a counterclaim where no affirmative relief is demanded.

Insufficient In Law.

FORM No. 92.

Demurrer to Several Defenses — No Affirmative Relief Demanded.

NEW YORK SUPREME COURT,
(*New York*) County.

(*JOHN JONES*),

Plaintiff,

vs.

(*WILLIAM SMITH*),

Defendant.

The plaintiff herein separately demurs to each of the several affirmative defences contained in the answer of the defendant herein and numbered respectively (*first, second and third*), upon the ground that each of same is insufficient in law upon the face thereof.

(*WILLIAM ARNOLD*),

Attorney for Defendant.

Office and Post-Office Address,

(*149 Broadway*),

(*New York City*).

FORM No. 93.

Demurrer to Defense and Counterclaim — No Affirmative Relief Demanded.

NEW YORK SUPREME COURT,
(*New York*) County.

(*JOHN JONES*),

Plaintiff,

vs.

(*WILLIAM SMITH*),

Defendant.

The plaintiff herein demurrers to the first and second separate defenses and to the counterclaim contained in the answer of the

 Several Grounds.

defendant upon the ground that each of them is insufficient in law upon the face thereof, and that the facts stated therein do not constitute a defense or a counterclaim herein.

(*WILLIAM ARNOLD*),

Attorney for Defendant.

Office and Post Office Address,

(149 Broadway),

(New York City).

FORM No. 94.

Demurrer to Counterclaim — Grounds: 1. Lack of Jurisdiction. 2. Another Action Pending. 3. Not of Character Specified in Section 501, Code.

NEW YORK SUPREME COURT,
(New York) County.

(*HOWARD BATES*),

Plaintiff,

vs.

(*MANNING E. CAMPBELL*),

Defendant.

Plaintiff demurs to so much of the answer herein constituting a counterclaim for the reason that it appears on the face thereof:

I. That the court has not jurisdiction of the subject thereof.

II. That there is another action pending between plaintiff and defendant for the same cause of action therein set forth.

III. That the counterclaim is not of the character specified in section 501 of the Code of Civil Procedure.

(*WILLIAM ARNOLD*),

Attorney for Defendant.

Office and Post-Office Address,

(149 Broadway),

(New York City).

Lack Of Capacity To Recover.

FORM No. 95.

Demurrer to Counterclaim — Ground: Lack of Legal Capacity to Recover on Same.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>RUFUS B. WALKER,</i>)	}
Plaintiff,	
vs.	
(<i>EBEN PARKER,</i>)	
Defendant.	}

The plaintiff demurs to the (*first*) alleged counterclaim contained in the answer herein on the ground that it appears upon the face of said counterclaim that defendant has not legal capacity to recover on the same, in that (*here specify grounds*).

(*WILLIAM ARNOLD*),

Attorney for Defendant.

Office and Post-Office Address,

(*149 Broadway*),

(*New York City*).

Insufficient In Law.

FORM No. 96.

Demurrer to Reply.

NEW YORK SUPREME COURT,
(*New York*) County.

(*WALTER J. SARGENT,*)
Plaintiff,
against

(*JOHN MEREDITH ELLIS,*)
Defendant.

The defendant demurs to the reply herein (*or*, to the first defense contained in the reply herein) on the ground that it is insufficient in law upon the face thereof.

(*WILLIAM ARNOLD*),

Attorney for Defendant.

Office and Post-Office Address,

(*149 Broadway*),

(*New York City*).

ANSWERS.

Note. — *It should be noted that sometimes it is wiser to default than interpose an answer.* *E. g.* Experience has shown that this is true in some tort actions, since plaintiff cannot have judgment except by assessment of damages by a sheriff's jury, and if it is thought that a sheriff's jury would give less than a petit jury, that course should be pursued.

Another instance is where an action is brought for breach of contract for services before, or almost immediately after the commencement of the term of service; in this case, as damages can only be recovered down to the date of assessment of damages, it might be wiser to default in the first instance.

Before Answering Consider Whether.

1. To serve demand for change of venue.
2. To move to make complaint more definite and certain.
3. To move to strike out irrelevant, redundant or scandalous matter in the complaint.
4. To move to separately state causes of action.
5. To move to elect between pleas.
5. To move for security for costs.
7. To move to transfer to United States Court.

FORM No. 97.

General Denial.

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(<i>WILLIAM THOMPSON</i>),	}
Plaintiff,	
against	
(<i>FREDERICK SMITH</i>),	
Defendant.	}

The defendant above named, by (*Ezra Williams*), his attorney, answering the complaint of the plaintiff herein,

Denies each and every allegation in said complaint contained.

Denial — Information And Belief.

WHEREFORE, the defendant demands that the complaint of the plaintiff herein be dismissed, with the costs and disbursements of this action.

(EZRA WILLIAMS),
Attorney for Defendant,
Office and Post Office Address,
(No. 15 William Street),
(New York City).

STATE OF NEW YORK, }
County of (New York), } ss.:

(FREDERICK SMITH), being duly sworn, says that he is the defendant herein; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

(FREDERICK SMITH.)

Sworn to before me, this }
(1st) day of (July, 1904). }

(FANNIE SCHULTZ),
Notary Public,
(New York) County (No. (30)).

FORM No. 98.

Denial Upon Information and Belief.

SUPREME COURT OF THE STATE OF NEW YORK,
(New York) County.

(WILLIAM THOMPSON),	}
Plaintiff,	
against	
(FREDERICK SMITH),	
Defendant.	

The defendant above named, by his attorney (*Ezra Williams*), answering the complaint of the plaintiff herein,

Upon information and belief, denies each and every allegation in said complaint contained.

Denial Of Knowledge Or Information.

WHEREFORE, the defendant demands that the complaint herein be dismissed, with the costs and disbursements of this action.

(EZRA WILLIAMS),

Attorney for Defendant,
Office and Post Office Address,
(No. 15 William Street),
(New York City).

(Verification.)

FORM No. 99.

Denial of any Knowledge or Information Sufficient to Form a Belief.
SUPREME COURT OF THE STATE OF NEW YORK,
County of (New York).

(WILLIAM THOMPSON),

Plaintiff,

against

(FREDERICK SMITH),

Defendant.

The defendant above named, by (Ezra Williams), his attorney, answering the complaint of the plaintiff herein, .

1. Denies that he has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 1, 2, and 3 of said complaint.

2. He admits that notice was served upon this defendant by the plaintiff herein, but denies any knowledge or information sufficient to form a belief as to the truth of any other of the allegations contained in paragraph 4 of said complaint.

WHEREFORE, the defendant demands that the complaint herein be dismissed, with the costs and disbursements of this action.

(EZRA WILLIAMS),

Attorney for Defendant,
Office and Post Office Address,
(No. 15 William Street),
(New York City).

(Verification.)

Mixed Denials And Admissions.

FORM No. 100.

Mixed Denials and Admissions.

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(<i>WILLIAM THOMPSON</i> ,)	}
Plaintiff,	
vs against	
(<i>FREDERICK SMITH</i> ,)	
Defendant.	

The defendant above named, by (*Ezra Williams*), his attorney, answering the complaint of the plaintiff herein,

1. Denies the allegations contained in paragraph 1 of said complaint.

2. On information and belief denies the allegations contained in paragraph 2 of said complaint.

3. Denies that he has any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 4 of said complaint.

4. Admits the allegations contained in paragraph 5 of said complaint, that notice was served upon this defendant by plaintiff herein, but denies each and every other allegation in said paragraph contained.

5. Admits the allegations contained in paragraph 6 of said complaint.

6. He denies that at (*No. 621 Fifth avenue, Borough of Manhattan, City of New York*), or at any other place, and on the (*3rd*) day of (*October, 1903*), or at any other time, this defendant *made the promises* set forth in the complaint.

7. Denies each and every allegation in said complaint contained, not hereinbefore specifically admitted or controverted.

WHEREFORE, the defendant demands that the complaint herein be dismissed, with costs and disbursements of this action.

(*EZRA WILLIAMS*),

Attorney for Defendant,

Office and Post Office Address,

(*No. 15 William Street*),

(*New York City*).

(Verification,)

Payment.

FORM No. 101.

Alleging Payment.

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(*WILLIAM THOMPSON*),

Plaintiff,

against

(*FREDERICK SMITH*),

Defendant.

The defendant above named, by (*Ezra Williams*), his attorney, answering the complaint of the plaintiff herein alleges:

That before the commencement of this action, and on or about the (10th) day of (*March*, 1906), the defendant satisfied and discharged the plaintiff's alleged claim by a payment to him of the full amount thereof.

WHEREFORE, the defendant demands that the complaint herein be dismissed, together with the costs and disbursements of this action.

(*EZRA WILLIAMS*),

Attorney for Defendant,

Office and Post Office Address,

(*No. 15 William Street*),

(*New York City*).

(Verification.)

Accord And Satisfaction.

FORM No. 102.

Answer Alleging an Accord and Satisfaction.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>FRANK WILBUR,</i>)	}
Plaintiff,	
against	
(<i>TROY BRASS & COPPER COM- PANY,</i>)	
Defendant.	

The defendant for answer to the complaint in the above-entitled action for a separate defense to the plaintiff's complaint herein, alleges that subsequently to the purchase of the said gas plant and blower by the defendant from the plaintiff at the sum of (\$2,590), and the engine at the sum of (\$200), and in or about the month of (*August*, 1904), the said arrangement respecting the purchase of the gas plant, blower and engine was altered in or about the month of (*September*, 1904), by an agreement in writing, executed by the plaintiff and delivered to the defendant providing for the immediate payment by the defendant for and on account of the plaintiff of the sum of (\$600), and expressly altering and abrogating the original agreement hereinbefore referred to, it being understood and agreed thereby in writing that upon the immediate payment of said sum of (\$600), by the defendant for and on account of the plaintiff, the balance due plaintiff, from defendant was to be the sum of (\$545.90); that this defendant, on or about (*September 20*, 1904), in accordance with said agreement, paid said sum of (\$600), and subsequently and on or about (*October 10*, 1904), the defendant paid to the plaintiff the said balance of \$545.90 in full satisfaction and discharge of the claim of the plaintiff in the complaint mentioned, and in full of all demands to that date.

WHEREFORE, defendant demands that the complaint herein be dismissed with costs.

(JOHN LARKIN),

Attorney for Defendant.

Office and Post-Office Address,

(Verification.)

(*Rome, N. Y.*)

Usury.

FORM No. 103.

Alleging Usury.

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(WILLIAM THOMPSON,)

Plaintiff,

against

(FREDERICK SMITH,)

Defendant.

The defendant above named, by (*Ezra Williams*), his attorney, answering the complaint of the plaintiff herein, alleges:

First: That the defendant gave to the plaintiff the note mentioned in the complaint herein, at (*New York City*), in pursuance of an agreement made at such time and place, between the plaintiff and the defendant, that the plaintiff should lend the defendant the sum of (\$500.00), from the (15th) day of (*June*, 1902), until the (15th) day of (*June*, 1903), upon interest at the rate of (*ten*) per cent. (*per annum*).

Second: That the defendant received from the plaintiff (\$450.00) only, as consideration for the said note; that the plaintiff retained (\$50.00) as interest thereon, according to the aforesaid agreement, to receive interest at the rate of (*ten*) per cent. (*per annum*).

Third: That the note mentioned in the complaint was made and delivered to the plaintiff at the (*Borough of Manhattan, City of New York*), upon the corrupt and usurious agreement, between the defendant and the plaintiff that the defendant should pay the plaintiff, and that the plaintiff should reserve and secure to himself, for the loan of (\$500.00) for (*one*) year, the sum of (\$50.00); that the same is at the rate of more than the legal rate of interest of (*six*) per cent. per annum, to wit, at the rate of (*ten*) per cent. per annum.

WHEREFORE, the defendant demands that the complaint herein be dismissed, with the costs and disbursements of this action.

(EZRA WILLIAMS),

Attorney for Defendant,

Office and Post-Office Address,

(No. 15 William Street),

(Verification.) (*New York City*).

Statute Of Limitations.

FORM No. 104.

Pleading Statute of Limitations.

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(<i>WILLIAM THOMPSON</i> ,)	}
Plaintiff,	
against	
(<i>FREDERICK SMITH</i> ,)	
Defendant.	

The defendant above named, by (*Ezra Williams*), his attorney, answering the complaint of the plaintiff herein, alleges:

That the cause of action stated in the complaint did not accrue within (*six*) years ^{next} before the commencement of this action, and that said action is barred by the Statute of Limitations.

WHEREFORE, the defendant demands that the complaint herein be dismissed, with costs and disbursements of this action.

(*EZRA WILLIAMS*),
Attorney for Defendant,
Office and Post-Office Address,
(*No. 15 William Street*),
(*New York City*).
(Verification.)

Statute Of Frauds.

FORM No. 105.

Setting Up Statute of Frauds.

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(<i>WILLIAM THOMPSON</i>),	}
Plaintiff,	
against	
(<i>FREDERICK SMITH</i>),	
Defendant.	

The defendant above named, by (*Ezra Williams*), his attorney, answering the complaint herein, alleges:

That the alleged agreement, as set forth in the complaint, by its terms was not to be performed within the space of one year from the making thereof;

That neither the said agreement nor any memorandum thereof was ever made or exists in writing, and signed or subscribed by the said defendant who is sought to be charged thereby, or by his lawful agent, and that any such alleged agreement is, therefore, as defendant is informed and believes, void as against this defendant, pursuant to the statute in such case made and provided.

WHEREFORE, the defendant demands that the complaint herein be dismissed, together with the costs and disbursements of this action.

(*EZRA WILLIAMS*),
Attorney for Defendant,
Office and Post-Office Address,
(*No. 15 William Street*),
(*New York City*).
(Verification.)

Statute of Frauds.

FORM No. 106.

Setting Up Statute of Frauds — Sale of Goods, Value Over \$50, not in Writing.

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(*WILLIAM THOMPSON*),

Plaintiff,

against

(*FREDERICK SMITH*),

Defendant.

The defendant above named, by (*Ezra Williams*), his attorney, answering the complaint herein, alleges:

That the said alleged agreement set forth in the complaint herein, was for the sale of goods, at an agreed price of more than \$50.00;

That neither said agreement, nor any note or memorandum thereof, was ever made or exists in writing, and signed or subscribed by the said defendant, who is sought to be charged thereby, or by his lawful agent; nor did the said purchaser accept or receive any part of such goods; nor did the said buyer pay any part of the purchase money; and that any such alleged agreement is, therefore, as defendant is informed and believes, void as against this defendant pursuant to the statute in such case made and provided.

WHEREFORE, the defendant demands that the complaint of the plaintiff herein be dismissed, together with the costs and disbursements of this action.

(*EZRA WILLIAMS*),

Attorney for Defendant,
Office and Post-Office Address,

(*No. 15 William Street*),
(*New York City*).

(Verification.)

General Release.

FORM No. 107.

Answer Setting Up General Release.

NEW YORK SUPREME COURT,
New York (*County*).

(<i>WILLIAM THOMPSON</i>),	}
Plaintiff,	
against	
(<i>FREDERICK SMITH</i>),	
Defendant.	

The defendant above named, by (*Ezra Williams*), his attorney, answering the complaint herein, alleges:

That on the (*8th*) day of (*February*, 1907), plaintiff, for a valuable consideration, executed and delivered to the defendant a release of the defendant of and from all liability to plaintiff for any and all claims of plaintiff against defendant, including the alleged cause of action set forth in the complaint, which existed at the date of the execution of said release, or which might thereafter arise against the defendant for and on account of anything or things done by the defendant prior to the date of execution of said release.

WHEREFORE, defendant demands that the complaint herein be dismissed, together with the costs and disbursements of this action.

(*EZRA WILLIAMS*),
Attorney for Defendant.
Office and Post-Office Address,
(*No. 15 William Street*),
(*New York City*).
(Verification.)

AFFIDAVITS OF SERVICE.

FORM No. 108.

Of Summons.

NEW YORK SUPREME COURT,
(*New York*) County.

(*JOHN JONES,*)

Plaintiff,

against

(*RICHARD ROE,*)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM RICH*), being duly sworn, says that on the (*2nd*) day of (*March*, 1903), at (*No. 17 William street, Borough of Manhattan, New York City*), deponent being then more than 21 years* of age, he served the annexed summons (and notice of judgment in case of default, or notice of no personal claim, or endorsement of reference to statute) personally in this action upon (*Richard Roe*), the defendant herein, personally, by delivering to and leaving with said defendant a true copy thereof. Deponent further says that he knows the person so served to be the person mentioned and described in said summons as (*Richard Roe*), the defendant herein.

(*WILLIAM RICH.*)

Sworn to before me, this }
(*2nd*) day of (*March*, 1903). }

(*RICHARD ROGERS,*)

Notary Public,

(*New York*) County, No. (2).

* Or if under 21 years of age, must be stated. The server must be over 18 years old.

Summons And Complaint.

FORM No. 109.

Of Summons and Complaint.

NEW YORK SUPREME COURT, .
(*New York*) County.

(<i>JOHN JONES</i>),	}
Plaintiff,	
against	
(<i>JOHN DOE</i>),	
Defendants.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM PARKER*), being duly sworn, deposes and says:

That on the (*second*) day of (*February*, 1903), at No. (*243 East 29th street, in the Borough of Manhattan, City of New York*), deponent being then over 21 years of age, he served the annexed summons and complaint in this action personally on (*John Doe*), the defendant in this action, by delivering copies of the same to such defendant and leaving the same with him.

He further says, that he knew the person served as aforesaid, to be the person mentioned and described in said summons as (*John Doe*), the defendant in this action.

(*WILLIAM PARKER.*)

Sworn to before me, this }
(*third*) day of (*February*, 1903). }

(*RICHARD ROE*),

Notary Public,

(*New York*) County, No. (2).

Summons — Divorce.

FORM No. 110.

Affidavit of Service — Of Summons, Divorce.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>RUPERT GREEN</i> ,)	} Plaintiff,
against	
(<i>ANNA GREEN</i> ,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*.) } ss.:

(*HENRY ESMONDE*), being duly sworn, deposes and says:

That he resides at (30 *West 10th*) street, in (*the Borough of Manhattan, City of New York*). That on the (24th) day of (*June* 1905) at about (11) o'clock in the forenoon on said day, deponent being then over 21 years of age, he served a copy of the annexed summons and complaint in the above-entitled action upon (*Anna Green*), the defendant named herein, by delivering to, and leaving with her personally, a true copy thereof.

Deponent further says that he knew the person who was served as aforesaid to be the person named and described in said summons and complaint as the defendant in this action, and that the sources of deponent's knowledge, and the grounds of his belief as to the identity of said person so served, are that he was accompanied at the time of making such service by (*Katherine Green*), who, previous to such service, stated to deponent that she well knew said (*Anna Green*) and had been personally acquainted with her for (10) years, as appears by the affidavit of said *Katherine Green* hereto annexed. And she then and there pointed out to the deponent the person so served as the said (*Anna Green*), and stated to the deponent that she was the person mentioned and described as the defendant in the said summons and complaint. At the time of making such service deponent asked the person so served by him if she was (*Anna Green*) and she stated to deponent that she was (*Anna Green*).

Summons — On Corporation.

*Deponent further says that said summons served as aforesaid, had the words "action for a divorce" legibly written upon the face thereof.

(HENRY ESMONDE.)

Sworn to before me, this }
(24th) day of (June, 1905). }

(ARTHUR BENSON),

Notary Public,

(New York) County.

FORM No. 111.

Of Summons on Corporation.

NEW YORK SUPREME COURT,

(New York) County.

(JOHN JONES,)

Plaintiff,

against

(BROWN MANUFACTURING
COMPANY,)

Defendant.

STATE OF NEW YORK, }
County of (New York), } ss.:

(WILLIAM RICH), being duly sworn, says that he is a clerk in the office of (Downs & Downs), the attorneys for the plaintiff, and that the (18th) day of (March, 1907), at (60 Wall street, in the Borough of Manhattan, City of New York), deponent being then 19 years of age, he served the annexed summons (and complaint, personally, on the above-named (Brown Manufacturing Company), the defendant herein, by delivering copies thereof to (William Brown, of New York City), personally, and leaving the same with him, and that he knew said (William Brown) to be at

* Last clause not necessary where the complaint is served with the summons within the State.

Summons And Complaint—On Infant.

that time the president of the said (*Brown Manufacturing Company*), and knew the corporation so served to be the company mentioned and described in the said summons as the defendant in this action. (WILLIAM RICH.)

Sworn to before me, this }
 (2nd) day of (*March*, 1903). }
 (OLIVER JOHNSON),
 Notary Public,
 (*New York*) County.

Note.—As to service on a foreign corporation see *Grant v. C. C. C. Co.*, 117 *App. Div.* 576; 54 *Misc.* 49.

FORM No. 112.

Of Summons and Complaint on Infant (under 14).

SUPREME COURT,
 (*New York*) County.

(JOHN JONES,)	}
Plaintiff,	
against	
(RICHARD ROE) and (MARY ROE,)	}
Defendants.	

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(WILLIAM MURCH), being duly sworn, deposes and says that he is a clerk in the office of (*Johnson & Miller*), attorneys for the plaintiff herein, and that, on the (16th) day of (*February*, 1907), at (*No. 85 Fifth Avenue, Borough of Manhattan, City of New York*), deponent then being more than 21 years of age, he served the annexed summons and complaint upon (*Mary Roe*), an infant under 14 years of age, by delivering the copy thereof to her,

Papers Other Than Summons.

personally, and leaving the same with her, and at the same time and place deponent delivered a copy thereof to and left the same with (*Richard Roe*), the father* of the said (*Mary Roe*), then having the care and control of the said (*Mary Roe*) and with whom the said (*Mary Roe*) was then residing; that deponent knew the defendant (*Mary Roe*) so served to be the person mentioned and described in the said summons as defendant herein and the said (*Richard Roe*) to be the father* of the said defendant.

(*WILLIAM MURCH.*)

Sworn to before me, this }
(2nd) day of (*March*, 1903). }
(*OLIVER JOHNSON*),
Notary Public, No. —,
New York (*County*).

FORM No. 113.

Of Papers (Other than Summons).

NEW YORK SUPREME COURT,
(*New York*) County.

(*JOHN JONES*),
Plaintiff,
against
(*JOHN DOE*),
Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:—

(*WILLIAM JONES*), being duly sworn, says:

That on the (*12th*) day of (*July*, 1904), at (*No. 202 East 12th street, Borough of Manhattan, City of New York*), he served

* Or mother or guardian or, if neither was within the State, the person, indicating relationship, if any, then having the care and control of said *Mary Roe* or with whom said *Mary Roe* was then residing or in whose service said *Mary Roe* was then employed, in either case adding facts as to parents and guardianship showing that he had none within this State.

§ 426, Sub-div. 1 of the Code of Civil Procedure.

Judge's Order.

the annexed *notice* upon (*John Doe*) by delivering to and leaving with him a copy thereof.

(*WILLIAM JONES.*)

Sworn to before me, this }
(12th) day of (*July*, 1904). }

(*RICHARD ROE*),
Notary Public,
(*New York*) County, No. (2).

FORM No. 114.

Of Judge's Order — Exhibiting Signature.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i>),	}
Plaintiff,	
against	
(<i>JOHN DOE</i>),	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM RICH*), being duly sworn, says that he is a clerk in the office of (*Higgins & Hughes*), attorneys for the plaintiff herein, and that on the (12th) day of (*July*, 1907), at (22 West Fortieth street, Borough of Manhattan, City of New York), deponent then being over 21 years of age, he served upon (*John Doe*), the (*defendant*), the annexed order (*and a copy of the annexed affidavit*) by delivering said copy of (*said affidavit, and a copy of*) said order to said (*John Doe*) personally, and leaving same with him, and at the same time and place exhibiting to him the annexed original order, and the signature of (*Charles F. MacLean*), justice, thereunto subscribed. And that he knew the said

Court Order.

(*John Doe*) to be the individual mentioned and described in said affidavit and order.

(*WILLIAM RICH.*)

Sworn to before me, this }
(12th) day of (*July*, 1907.) }

(*RICHARD ROE*),
Notary Public,
(*New York*) County, No. (2).

FORM No. 115.

Of Court Order — Leaving Copy.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i>),	}
Plaintiff,	
against	}
(<i>JOHN DOE</i>),	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM RICH*), being duly sworn, says that he is a clerk in the office of (*Higgins & Hughes*), attorneys for (*the plaintiff*) herein, and that on the (12th) day of (*July*, 1907), at (22 West 40th street, Borough of Manhattan, City of New York), deponent then being (*over twenty-one years*) of age, he served upon (*John Doe*), the defendant, the annexed order and copy of the annexed affidavit by delivering a copy of the said affidavit and a copy of the said order to said (*John Doe*), personally, and leaving the same with him. At the same time deponent exhibited to him a true copy of the said order duly certified at the foot thereof by

On Attorney — Office Closed.

(*Peter J. Dooling*), Clerk of the County of (*New York*), in whose office said order had been duly entered.

(Signed) (*WILLIAM RICH.*)

Sworn to before me, this }
 (12th) day of (*July*, 1907). }
 (*RICHARD ROE*),
 Notary Public,
 (*New York*) County, No. (2).

FORM No. 116.

On Attorney When His Office is Closed.

NEW YORK SUPREME COURT,
 (*New York*) County.

<p>(<i>JOHN JONES</i>), Plaintiff, against (<i>JOHN DOE</i>), Defendant.</p>
--

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*WILLIAM RICH*), being duly sworn, says that he is a clerk in the employ of (*Brown & Mills*), the attorneys for the (*plaintiff*) herein; that on the (12th) day of (*March*, 1903), at (2:30) o'clock (*P. M.*) he served the annexed order upon (*Alexander Duffield*), attorney for (*defendant*), by depositing it, inclosed in a sealed wrapper directed to him, in his office letter box, at his office, No. 8 Pine street, New York city, which is the office address given by said attorney in the last paper served by him herein, said attorney being absent at the time of such service, and his office closed.

(*WILLIAM RICH.*)

Sworn to before me, this }
 (12th) day of (*March*, 1903). }
 (*RICHARD ROE*),
 Notary Public,
 (*New York*) County, No. (2).

On Attorney — During Absence.

FORM No. 117.

On Attorney During Absence (Office Open, no Person Present).

NEW YORK SUPREME COURT,
(*New York*) County.

(JOHN JONES,)

Plaintiff,

against

(JOHN DOE,)

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM RICH*), being duly sworn, says that he is a clerk in the employ of (*Brown & Mills*), the attorneys for the (*plaintiff*) herein; that on the (*12th*) day of (*March, 1903*), at (*2:45*) o'clock (*P.*) M., he served the annexed order upon (*Alexander Duffield*), attorney for (*defendant*), by leaving it in a conspicuous place in his office (*No. 8 Pine street, New York City*), which is the office address given by him on the last paper heretofore served by him herein, to wit: (*on a large flat top desk in the outer office*), said attorney being absent at the time of such service, and there being no person in charge of his said office at such time.

(WILLIAM RICH.)

Sworn to before me, this }
(*12th*) day of (*March, 1903*). }

(RICHARD ROE),

Notary Public,

(*New York*) County, No. (2).

 On Attorney — Person In Charge.

FORM No. 118.

Upon Person in Charge.

NEW YORK SUPREME COURT,
(*New York*) County.

(JOHN JONES,)	}
Plaintiff,	
against	
(JOHN DOE,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM RICH*), being duly sworn, says that he is a clerk in the employ of (*John Elwell*), the attorney for the (*plaintiff*) herein; that on the (*12th*) day of (*March*, 1903), at (2:45) o'clock (*P.*) M., he served the annexed order upon (*Alexander Duffield*), attorney for (*defendant*) by delivering a copy thereof to and leaving it with a person in charge of his office, at (*No. 8 Pine street, New York City*), which is the office address designated by him in the preceding paper herein; said attorney being absent at the time of such service.

(*WILLIAM RICH.*)

Sworn to before me, this }
(*12th*) day of (*March*, 1903). }

(*RICHARD ROE*),
Notary Public,
(*New York*) County (No. (2)).

On Attorney — By Mail.

FORM No. 119.

On Attorney — By Mail.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES,</i>)	}
Plaintiff,	
against	
(<i>JOHN DOE,</i>)	
Defendant.	

STATE OF NEW YORK,
County of (*New York*), ss.:

(*WILLIAM RICH*), being duly sworn, says that he is a clerk in the employ of (*John Freeman*), the attorney for the (*plaintiff*) herein; that on the (*12th*) day of (*March, 1903*), at (*2:45*) o'clock (*P.*) M., he served the annexed order upon (*Alexander Duffield*), attorney for (*defendant*), by depositing it in the general post office, New York City (*or in a post office box, at 346 Broadway, Borough of Manhattan, City of New York, the same being one of the regular post office boxes of the New York City post office*), inclosed in a securely closed post-paid wrapper addressed to said attorney at his office, No. (*52 William*) street, (*Borough of Manhattan*) City of (*New York*), that being the address designated by him in the last paper served by him herein.

(*WILLIAM RICH.*)

Sworn to before me, this }
(*12th*) day of (*March, 1903*). }

(*RICHARD ROE*),
Notary Public,
(*New York*) County, No. (*2*).

ACCOUNTS AND BILLS OF PARTICULARS.

FORM No. 120.

Demand for Copy of Account. *

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(<i>WILLIAM THOMPSON</i>),	}
Plaintiff,	
against	
(<i>FREDERICK SMITH</i>),	
Defendant.	

Sir:

I hereby demand that you deliver to me within (*ten*) days from the date of the service of this demand, a verified copy of the account referred to in the complaint in this action.

Dated (*May 2nd*, 1904).

Yours, etc.,
(*EZRA WILLIAMS*),
Attorney for Defendant,
Office and Post-Office Address,
(*No. 15 William Street*),
(*New York City*).

To

(*WILLIAM REILLY*),
Attorney for Plaintiff,
(*No. 27 Pine Street*),
(*New York City*).

* See note page 334.

Items.

FORM No. 121.

Copy of Account.

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(WILLIAM THOMPSON),	}
Plaintiff,	
against	
(FREDERICK SMITH),	}
Defendant.	

New York, April 2, 1904.

Frederick Smith, Esq.,

To William Thompson.

<i>Jany. 12, 1904, cash advanced.....</i>	<i>\$800</i>
<i>" 20, " " "</i>	<i>350</i>
<i>Mar. 15, " " "</i>	<i>1,400</i>
	<i>\$2,550</i>

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*HENRY RUSSELL*), being duly sworn, says that he is (*general business manager for William Thompson*), the plaintiff herein, and is familiar with all the transactions had by said plaintiff with the defendant above named; that he has read the foregoing account and knows the contents thereof, and that the matters therein stated are true to deponent's knowledge.

(*HENRY RUSSELL*.)

Sworn to before me, this }
(12th) day of (*May, 1904*). }

(*ARTHUR DENTON*),
Notary Public,
(*New York*) County.

In What Actions.

Sir:

PLEASE TAKE NOTICE, that the above is a copy of the account referred to in the complaint in this action, and demanded by you.

Dated (*May 12th*, 1904).

Yours, etc.,
(*WILLIAM REILLY*),
Attorney for Plaintiff,
(*No. 27 Pine Street*),
(*New York City*).

To

(*EZRA WILLIAMS*),
Attorney for (*Defendant*).

NOTE.

There is no provision authorizing the service of a demand for a bill of particulars except in an action upon an account. A demand therefor in any other kind of action is a nullity and may be disregarded or may even, on motion, be stricken out. It is, however, common practice to serve a demand (in actions other than on an account) before making a motion for a bill of particulars, although of no legal force, as it may have a bearing upon the court's exercise of discretion as to costs (88 *App. Div.* 237, 47 *Misc.* 5).

In case of a failure to serve a copy of the account pursuant to the demand it is not sufficient to rely upon the provisions of section 531 of the Code of Civil Procedure to exclude evidence of the items of the account. An order must be obtained at Special Term, before trial, for that purpose. (*Gebhart v. Parker*, 120 *N. Y.* 33.)

Some practitioners upon obtaining an order for a bill of particulars prefer to have it in the alternative, *i. e.*, prescribing a penalty for non-compliance, which usually, the court will provide, shall be the exclusion of evidence upon the trial of the matters regarding which particulars have been demanded.

Other practitioners leave the matter of the penalty for non-compliance until the happening of the event, in other words, take an order simply directing a bill of particulars. When such an order is taken, if there be a non-compliance, the attorney may move either to strike out the pleading or to exclude the evidence on the trial or for a stay of proceedings.

Demand.

In a case where the bill is asked for after answer the order is usually in the alternative. If before answer the proceeding is usually commenced by an order to show cause and provision made in the order for extension of time to plead upon proper allegations in the affidavit.

Bill of Particulars Before Answer.

It is dangerous practice to ask for an extension of time from the court in the moving papers for a bill of particulars before answer, since the papers in that event must contain an affidavit of merits which may prove an insurmountable obstacle (65 *App. Div.* 29). It has even been held that such a motion before answer is premature and will be denied (45 *Misc.* 201, 95 *App. Div.* 162, 104 *App. Div.* 20, 118 *App. Div.* 91). But see (*Ziegler v. Garvin*, 84 *App. Div.* 281). In any event a motion for a bill of particulars, or in the alternative to make more definite and certain, should not be combined (118 *App. Div.* 830).

It is better, if possible, to obtain the extension from the court (provided your adversary makes such course necessary) only after the motion for the bill has been made.

FORM No. 122.
Demand for Bill of Particulars.

SUPREME COURT,
(*New York*) County.

(<i>ALFRED D. ZEE</i> ,)	}
Plaintiff,	
against	
(<i>CHARLES E. GAR</i>) and another,	}
Defendants.	

Sir:

YOU WILL PLEASE TAKE NOTICE that the defendant, (*Charles E. Gar*), hereby demands that the plaintiff serve upon

Demand — Negligence.

the undersigned a bill of particulars of the items going to make up the plaintiff's alleged claim (*together with the names of the persons whom the plaintiff alleges he procured to purchase defendants' paper and goods, and the dates, and the persons to whom such sales were made*), as alleged in the (*third*) paragraph of the plaintiff's complaint.

Dated, (*January 10, 1903*).

Yours, etc.,
(*HOWARD THORN*),

Attorney for Defendant (*Charles E. Gar*),
(*41 Third Street, Newburgh, N. Y.*).

To

(*SIDNEY ROSENBLUM*), Esq.,
Attorney for Plaintiff,
(*22 William*) Street,
(*New York City*).

FORM No. 123.

Demand for Bill of Particulars.

NEW YORK SUPREME COURT,
(*New York*) County.

(*WILLIAM STONE*),
Plaintiff,

against

(*MANHATTAN PRINTING COM-
PANY*),

Defendant.

Sir:

PLEASE TAKE NOTICE, that I hereby demand that you serve upon me within ten days a (verified) bill of particulars of the plaintiff's claim for damages set forth in the complaint herein, showing:

1. *The hour and the minute of the day, as nearly as may be stated, at which the acts complained of were committed.*

Demand — Negligence.

2. As nearly as may be *the exact location of the linotype machine by which plaintiff was injured; in what respects the said machine was unsafe and defective in construction, and in what respects the said machine was carelessly, negligently, and unskillfully operated and maintained as alleged in the third paragraph of the complaint.*

3. In what respects *plaintiff was seriously injured, with a statement of each injury complained of, its nature, location and extent, in so far as the same has not been specifically set forth in the complaint.*

4. An itemized statement of "*the great expense*" to which *plaintiff was put for "medical and surgical attendance, appliances and medicines," as alleged in the fourth paragraph of the complaint.*

5. *The number of weeks during which plaintiff "was confined to his bed," as alleged in the fourth paragraph of the complaint.*

Dated, *New York, March 14, 1905.*

Yours, etc.,

(JOHN J. MAXWELL),

Attorney for (Defendant),

(26 Liberty) Street,

(New York City).

To

(CHARLES W. CLINTON), Esq.,

Attorney for (Plaintiff),

(32 Nassau Street),

(New York City).

Demand — Negligence.

FORM No. 124.

Demand for Bill of Particulars — Specifying Negligence.

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(<i>WILLIAM THOMPSON</i>),	}
Plaintiff,	
against	
(<i>FREDERICK SMITH</i>),	
Defendant.	

Sir: `

I hereby demand that you deliver to me within ten (10) days from the date of the service of this demand, a (verified) bill of particulars specifying (*the train on which deceased was employed when he was killed, and the other train mentioned in the complaint herein, and in what defendant's alleged negligence in operating them consist; what locomotive killed decedent; at what places the track was unsafe; what rules and regulations were insufficient, and what appliances were unsafe and in what particular; where in the town of Yonkers the said train was being operated at the time of his death; what appliances, rolling stock and equipments were unsafe, and in what particular as alleged in the complaint.*)

Dated, (*August 11, 1904.*)

Yours, etc.,
(*EZRA WILLIAMS*),
Attorney for (*Defendant*),
Office and P. O. Address,
(*No. 15 William*) *Street*,
(*Borough of Manhattan*),
(*City of New York*).

To

(*WILLIAM REILLY*),
Attorney for (*Plaintiff*),
(*No. 27 Pine Street*),
(*New York City.*)

Order To Show Cause.

FORM No. 125.

Before Answer — Order to Show Cause.*

SUPREME COURT,
(*New York*) County.

(<i>ALFRED D. ZEE</i>),	} Plaintiff,
	against
(<i>CHARLES E. GAR</i>) and another,	} Defendants.

Upon the summons and complaint herein and the affidavits of (*Charles E. Gar*) and (*Howard Thorn*), verified (*January 24th*, 1903), let the plaintiff or his attorney show cause at a Special Term, (*Part I.*), of this court, appointed to be held at the County Court House in the (*City of New York, Borough of Manhattan*), on the (*29th*) day of (*January*, 1903), at the opening of the court on that day, why the plaintiff should not be required to serve upon the defendant (*Charles E. Gar*), or his attorney, the bill of particulars asked for in the affidavit of said (*Thorn*), and why the said defendants' time to answer should not be extended for a period of twenty days after the service of said bill of particulars. In the meantime and until the determination of said order to show cause, let all proceedings on the part of the plaintiff be stayed.

Service of a copy of this order and of said affidavits on the attorney for the plaintiff on or before (*January 27th*, 1903), will be deemed sufficient.

Dated, (*January 26*, 1903).

(*H. A. GILDERSLEEVE*),
Justice of the Supreme Court of the State of New York.

* See (*Ziegler v. Garvin*, 84 App. Div. 281).

Affidavit.

FORM No. 126.

Motion for Bill of Particulars — Before Answer — Affidavit.

SUPREME COURT,
(*New York*) County.

(ALFRED D. ZEE,)

Plaintiff,

against

(CHARLES E. GARR) and another,
Defendants.STATE OF NEW YORK, }
County of (*Orange*), } ss.:

(HOWARD THORN), being duly sworn, deposes and says that he resides at (312 *Gates avenue*) in the (*City of Newburgh*), in (*said county*), and is the attorney for the defendant (*Charles E. Garr*); that deponent was retained as attorney for said defendant in this action on (*January 8th, 1903*); that the summons and complaint herein were served on the (*2nd*) day of (*January, 1903*), and that by reason of the shortness of time remaining deponent procured an order extending the defendant's time to answer for a period of twenty days from (*January 22, 1903*), and that the defendant's time to answer will therefore expire on (*February 12th, 1903*); and that the said defendant's time to answer has not been extended either by stipulation or by order, except as above, and that no previous application for an order extending the time to answer herein from the time when it will now expire has been made. On (*January 12, 1903*), deponent sent a messenger to (*New York City*) and served upon (*Julius Rosenfeld, Esq.*), plaintiff's attorney, a copy of said order and a demand for a bill of particulars, a copy of which demand is hereto annexed; that the plaintiff's time to serve such bill of particulars expired on (*January 23, 1903*), but that the plaintiff has failed to serve the same as required by said demand; that the cause of action as set forth in plaintiff's complaint alleges that (*the plaintiff sold for the defendants or secured for the defendants the sales of a large quantity of paper, amounting to \$200,000, on which he claims a*

Affidavit.

commission of \$10,000); that as appears by the affidavit of the defendant (*Charles E. Garr*), hereto annexed, the said defendant is utterly ignorant of (*such sales or the persons to whom such sales were made*); that in the opinion of deponent it is necessary that said defendant and this deponent should be informed of (*the names of the alleged purchasers of said paper, as well as the amounts sold said purchasers, and the dates of the sales to them*), in order that the defendant may properly prepare his answer herein, and that without such information, which, as appears from the affidavit of the defendant (*Charles E. Garr*), is entirely within the knowledge of the plaintiff, the defendant cannot properly prepare his answer herein.

Deponent therefore asks, in view of the fact that the time to answer will expire on (*February 13, 1903*), and the regular eight days' notice cannot be given, that an order may be made herein directing the plaintiff or his attorney to show cause at a Special Term of this court on (*February 9th, 1903*), why an order should not be made herein directing the plaintiff to serve within ten days thereafter a bill of particulars showing (*the names of the person or persons to whom the sales alleged to have been made in the complaint, and the names of the persons whom the plaintiff procured to purchase and to contract with the defendants to purchase the defendants' paper and goods, and the dates when said sales were made, or such contracts were procured*), and that the defendant's time to answer may be extended for a period of twenty days after the receipt of such bill of particulars.

Deponent further says that he is the attorney of the said defendant, but that owing to absence of deponent from the city, the said defendant has been unable to confer with deponent in relation to this action. That from an examination of the complaint and from the correspondence in connection with the matters referred to in the complaint, and from the fact that there are parties without the State with whom deponent must confer or correspond prior to preparing an answer in this action, it will be impossible for the deponent to prepare such answer prior to the time limited, namely, (*February 13th, 1903*). That, as deponent verily believes the defendant has a good and substantial defense upon the merits to the cause of action set forth in the complaint, or some part thereof, such belief being founded upon statements of the case in the action made to deponent by the defendant (*Charles E. Garr*)."

Affidavit.

Deponent therefore applies for an order extending the time of the defendant, (*Charles E. Garr*), to answer, demur or take such other action with reference to the plaintiff's complaint as may be necessary for a period of twenty days.

Deponent further says that no previous application has been made for an order such as is herein applied for.

(*HOWARD THORN.*)

Sworn to before me, this }
(24th) day of (*February*, 1903). }

(*W. J. WYMAN*),
Notary Public,
(*Orange*) County.

FORM No. 127.

Motion for Bill of Particulars — Before Answer — Affidavit.

SUPREME COURT,
(*New York*) County.

(<i>ALFRED D. ZEE</i>),	}
Plaintiff,	
against	
(<i>CHARLES E. GAR</i>) and another,	
Defendants.	

STATE OF NEW YORK, }
County of (*Orange*), } ss.:

(*CHARLES E. GAR*), being duly sworn, deposes and says, that he resides in the (*town of New Windsor*), in the County of (*Orange*) aforesaid, and that he is one of the defendants in this action; that this action was commenced on or about the (23rd) day of (*December*, 1902), by the service of a summons and complaint on deponent, and that the object of the action, as appears from said complaint, is (*to recover commissions for services alleged to have been rendered by the plaintiff in selling paper manufactured by the defendants*; that (*Howard Thorn*), of (*the City of*

Affidavit.

Newburgh, N. Y.), is the general attorney of deponent, and that deponent was unable to see his said attorney until about the (8th) day of (*January*, 1903), by reason of said attorney's absence from (*Newburgh*) and deponent's absence from his place of residence; that as soon as deponent was able to have a consultation with his attorney, he had such, and after such consultation deponent was advised by said attorney that he had a good and substantial defense to said action or some part thereof upon the merits, and that thereupon deponent directed his said attorney to take such action as might be necessary to protect deponent's interests in said action.

Deponent further says that he has read the complaint in this action and knows the contents thereof, and that he is utterly ignorant of the facts and circumstances upon which the plaintiff bases his claim in this action; that while it is true the plaintiff did sell or secure the sale of certain paper manufactured by these defendants, yet this defendant did not ever make any such contract as is alleged in the plaintiff's complaint, and deponent has no knowledge or information of any sales made by the plaintiff whereby he earned or became entitled to demand from these defendants the sum of (\$10,000), as alleged in the complaint; that if sales of paper were made by the plaintiff which would entitle him to demand such a sum of money, the names of the person or persons to whom said sales were made, as well as the amount of such sales and the dates of said sales are wholly within the knowledge of the plaintiff, and this defendant has no way of informing himself thereof.

Deponent further says, that the total amount of sales made or secured by the plaintiff for or on account of these defendants will not exceed (\$3,208.31), (upon which the plaintiff would be entitled to receive as and for his commissions the sum of \$160.43), upon account of which these defendants have paid the sum of (\$50), which amount these defendants have always been ready and are still ready and willing to pay.

(*CHARLES E. GAR.*)

Sworn to before me, this }
(24th) day of (*January*, 1903). }

(*W. J. WYMAN*),
Notary Public,
(*Orange*) County.

 Order.

FORM No. 128.

Order for Bill of Particulars — Extending Time to Answer.

At a Special Term of the Supreme Court, (*Part I*),
held at the County Court House, in the (*City of*
New York, Borough of Manhattan), on the (*2d*)
day of (*April, 1903*).

Present: HON. (*CHARLES H. TRUAX*), Justice.

(*ALFRED D. ZEE*),

Plaintiff,

against

(*CHARLES E. GAR* and *WIN-*
FIELD J. GAR, doing business
under the firm name and title of
GAR PAPER COMPANY),
Defendants.

An order having been made in the above-entitled action on (*January 26th, 1903*), by Mr. Justice (*Gildersleeve*), requiring the plaintiff to show cause at a Special Term of this court in (*Part I.*), on (*January 29th, 1903*), why he should not furnish the attorney for the defendant with a bill of particulars as requested in the affidavit of said attorney, and why the time of the defendant (*Charles E. Gar*) should not be extended for a period of (*twenty*) days after the receipt of such bill of particulars, and said motion having duly come on to be heard,

Now, on reading and filing the complaint in this action, the affidavits of (*Charles E. Gar*) and (*Howard Thorn*), both verified (*January 24th, 1903*), and the notice of appearance and demand served upon plaintiff's attorney, all of which were read in support of said motion, and on reading and filing the affidavits of (*Sidney Rosenblum*), verified the (*30th*) day of (*January, 1903*), and of (*Alfred D. Zee*), verified (*February 3rd, 1903*), in opposition to said motion, and after hearing (*Howard Thorn*), of counsel for the defendant (*Charles E. Gar, and Sidney Rosenblum*), Esq., of counsel for the plaintiff, and

On motion of (*Howard Thorn*), attorney for the defendant (*Charles E. Gar*),

Notice Of Motion—Services.

ORDERED, that the plaintiff within (*ten*) days after the service of a copy of this order, with notice of entry thereof, on plaintiff's attorney, serve upon the attorney for the defendant (*Charles E. Gar*) a bill of particulars or statement showing (*the party or parties to whom said goods were sold, and also the time when the goods were sold, and also the names of the party or parties whom the plaintiff procured to purchase goods from the defendants*), as alleged in the complaint.

And on like motion, it is

FURTHER ORDERED that the time of the defendant (*Charles E. Gar*) to answer the plaintiff's complaint herein be, and the same is hereby, extended for a period of (*twenty*) days after the service on the defendants' attorney of the bill of particulars herein directed to be served.

Ent.,

C. H. T.,
J. S. C.

FORM No. 129.

Notice of Motion for Bill of Particulars — Action for Services.

SUPREME COURT,
(*New York*) County.

(<i>JOHN AIRD,</i>)	} .
Plaintiff,	
against	
(<i>HIGHLAND TRACTION COM- PANY,</i>)	
Defendant.	

Sir:

PLEASE TAKE NOTICE, that upon the annexed affidavit of (*William Sparrow,*) verified the (*4th*) day of (*April, 1902,*) and upon the pleadings herein, we shall move this court at a Special Term, (*Part I,*) to be held at (*the County Court House in the Borough of Manhattan, City of New York*), on the (*15th*) day of (*April, 1902*), at the opening of court on that day, or as soon

Notice Of Motion — Services.

thereafter as counsel can be heard, for an order directing the plaintiff to furnish a (verified) bill of particulars of his claim, which shall more specifically set forth the following matters, with reference to the allegations contained in paragraph (III) of the complaint herein.

1. That plaintiff state (*whether said alleged employment or retainer of the plaintiff by the defendant was in writing or oral; and state the terms thereof with time, place and circumstance of making, together with the names of the officers or other persons who, it is claimed, acted for or on behalf of defendant at the time of the alleged engagement and retainer under the terms of which the professional services referred to were rendered*).

2. That plaintiff furnish an itemized statement of (*the professional services alleged to have been rendered between February 1, 1900, and December 1, 1900, upon which the charge of \$10,000 as set forth in the complaint is based, which statement shall show the precise nature and character of the services therein set forth with the dates thereof*).

3. That plaintiff state (*the name of the officer or officers or other persons representing the defendant at whose "special instance and request" the services alleged to have been rendered were performed, if such request were in writing, and stating terms, together with time, place and circumstances of making*), and for such other and further relief as to the court may seem just in the premises.

Dated, (*New York, April 5, 1902*).

Yours, etc.,

(*STOW & BAXTER*),

Attorneys for (*Defendant*),

(*5 Nassau Street,*
New York City).

To

(*John Oliver*), Esq.,

Attorney for (*Plaintiff*),

(*31 Nassau Street,*
New York City).

FORM No. 130.

Notice of Motion for Bill of Particulars — Action for Personal Injuries.

SUPREME COURT,
(New York) County.

(WILLIAM STONE,)

Plaintiff,

against

(MANHATTAN PRINTING COM-
PANY,)

Defendant.

Sir:

PLEASE TAKE NOTICE, that upon the annexed affidavit of (Daniel Boone), verified the (19th) day of (March, 1905), and upon all the pleadings and proceedings already had herein, and especially upon the demand for a verified bill of particulars heretofore served on you on the (5th) day of (March, 1905), the original of which is hereto annexed, with proof of service thereof, the undersigned will move this court, at a special term, (Part I), thereof, to be held at the County Court House in the (Borough of Manhattan, City of New York), on the (27th) day of (March, 1905), at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order directing the plaintiff to serve upon the attorneys for the defendant a verified bill of particulars, setting forth his claim for damages, and showing in detail:

1. * (The hour and minute of the day, so nearly as may be stated, at which the acts complained of were committed.)

2. As nearly as may be, (the exact location of the linotype machine by which plaintiff was injured; in what respects the said machine was unsafe and defective in construction, and in what respects the said machine was negligently and carelessly maintained) as alleged in the (third) paragraph of the complaint.

* For other particular demands, see Abbott's Prac. & Forms, vol. II, p. 1400.

Notice Of Motion — Negligence.

3. In what respects *plaintiff* (" *was seriously injured*"), as alleged in the (*fourth*) paragraph of the *complaint*, with a statement of (*each injury complained of, its nature, location and extent*), in so far as the same has not been specifically set forth therein.

4. An itemized statement of (*the "great expense" to which plaintiff was put for "medical and surgical attendance, medicines and appliances"*), as alleged in the (*fourth*) paragraph of the *complaint* (*and in case plaintiff's physician or physicians have not yet rendered a bill to plaintiff for medicines and services, a statement of the number of calls said physician or physicians made to plaintiff's house, and of the number of visits plaintiff paid to the office of said physician or physicians in the course of treatment of the injuries alleged in the complaint to have been sustained by reason of the negligence of the defendant, its servants and employees, and of the nature and number of surgical operations, if any, performed in the treatment of said injuries*).

5. The number of days during which the plaintiff was confined to his bed, as alleged in the (*fourth*) paragraph of the *complaint*, and the number of days during which plaintiff was kept away from his usual employment or occupation.

6. In what respects (*the plaintiff has been rendered less capable of performing the duties and labors required of him in his usual occupation or calling, as alleged in the fourth paragraph of the complaint*).

And further directing that until the service of such verified bill of particulars in compliance with such order, the (*plaintiff*) and his attorney be stayed from any and all proceedings, except to review or vacate the order granted upon this motion, and that upon his failure to serve said verified bill of particulars, the (*plaintiff*) and his attorney be precluded from giving any evidence upon the trial of this action in support of the facts enumerated in this notice of motion.

Defendant will further ask that the order shall direct that in the event of the failure of the plaintiff to serve the verified bill of particulars, the defendant may obtain an order *ex parte* dismissing the complaint of the plaintiff herein, and for such other and further

Affidavit — Services.

relief as to the court may seem proper, together with the costs of this motion.

Dated, (*New York, March 19th, 1905*).

Yours, etc.,
 (BAYARD H. JAMES),
 Attorney for (*Defendant*),
 Office and Post-Office Address,
 (10 Wall) Street,
 (*New York City*).

To
 (LEONARD JOHNSON),
 Attorney for (*Plaintiff*),
 (*New York City*).

Note.— It has been held a clause may be inserted requiring party, if he has no knowledge of any of the particulars asked for, to state such lack of knowledge under oath in lieu of the particulars (48 *Misc.* 626, 97 *App. Div.* 137).

FORM No. 131.

Affidavit to Secure — Action for Services.

SUPREME COURT,
 (*New York*) County.

(JOHN AIRD,)	} Plaintiff,
against	
(THE HIGHLAND MANUFACTURING COMPANY,)	
Defendant.	

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(WILLIAM SPARROW), being duly sworn, says: That he is the (*secretary and treasurer*) of the defendant (*company*), and has been such since the (20th) day of (*May, 1900*), and is familiar with

Affidavit — Services.

the facts and circumstances relating to the business of said (*company*) during that period, and that most of the transactions relating to the business affairs of said (*company*) during the time mentioned took place under deponent's personal observation and control; and such transactions as did not come under his personal knowledge or direction deponent is familiar with by reason of his examination of the records, correspondence and papers of the said (*company*) and by reason of consultations, and conversations with the directors and officers thereof.

That the complaint was served on the defendant on the (2nd) day of (*March*, 1905), that the cause is at issue by the service of defendant's answer on the (22nd) day of (*March*, 1905). (*State facts excusing delay in making motion, if any.*)

Deponent further says that he has read the complaint and the answer of the defendant, and he believes and avers that a bill of particulars setting forth the matters hereinafter specified is necessary, and that unless such bill of particulars is furnished by the plaintiff said defendant and its attorney will be unable to properly and adequately prepare for a trial of this action.

That deponent has not, nor, as he is informed and believes, has the defendant (*company*) or any of its officers any knowledge or information of (*any engagement or employment on their part of the professional services of this plaintiff*), and deponent avers, upon information and belief, that said (*company did not engage, employ or retain the plaintiff for the purpose set forth in the complaint*). That deponent has not, nor, as he is informed and believes, has any officer of the defendant (*company*) any knowledge or information as to (*the nature, character or extent of services alleged to have been performed, and which are stated to be the basis of the claim set forth in the complaint*). That the deponent has not, nor, as he is informed and believes, has any officer of the defendant (*company*) any knowledge or information as to (*a request having been made by the defendant company for the performance of such alleged services described in the complaint*), and deponent has no knowledge, and as he is informed and believes, the other officers of the defendant (*company*) have no knowledge of (*any agreement whatever to pay the plaintiff the sum of sixteen thousand dollars (\$16,000), or any sum whatever for said alleged services*).

That said defendant will be unable to properly or adequately prepare for trial of the issue as to whether (*any engagement or retainer was entered into between the said defendants and the*

Affidavit — Services.

plaintiff for any services rendered under said retainer, or at the instance and request of said defendant), unless the particulars asked for herein in relation thereto are furnished, and unless the nature and extent of the alleged services rendered are specifically stated and the names of the officer or officers of the defendant company alleged to have authorized the performance of the same, and have agreed in behalf of the defendant (company) to the payment therefor are furnished.

Deponent, therefore, asks that the plaintiff shall be required to furnish to the defendant the following particulars and to specify therein the following matters, to wit:

1. That the plaintiff state (whether said alleged "engagement, employment and retainer" of the plaintiff by the defendant, the Highland Manufacturing Company, was in writing or oral; if in writing, attach a copy thereof; if oral, state the terms thereof, the time and place and the circumstance of making, with the names of the officers or other persons who plaintiff claims acted for or in behalf of the defendant at the time of such alleged engagement or retainer, under the terms of which this alleged professional service referred to was rendered).

2. That plaintiff furnish an itemized statement of (the professional services alleged to have been rendered between March 1, 1901, and December 31, 1904, upon which said charge of sixteen thousand dollars (\$16,000) is based), which statement shall show the precise nature and character of the service therein set forth with the dates of the rendering thereof.

3. That the plaintiff state (the name of the officer or officers or other persons representing the defendant at whose "special instance and request" the services alleged to have been rendered between March 1, 1901, and December 31, 1904, were performed, and whether said request was in writing, and if oral, state the terms and time and place and circumstance of making).

4. That the plaintiff state (the name of the officer or officers or other person representing the defendant, who, it is alleged, have agreed to pay the plaintiff for the professional services alleged to have been rendered between those dates).

On information and belief that on the (22nd) day of (March, 1905), a demand was made upon the plaintiff's attorney for the bill of particulars specified in the demands numbered 1 to 4 of the notice of motion hereto annexed, and that plaintiff has failed

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to comply with such demand as appears by the affidavit of (*George Morgan*) thereto annexed.

(*WILLIAM SPARROW.*)

Sworn to before me, this }
(4th) day of (*April*, 1905). }

(*ANNA R. KEMP*),

Notary Public,

(*New York*) County.

FORM No. 132.

Affidavit to Secure — Action for Personal Injuries.

SUPREME COURT,
(*New York*) County.

(*WILLIAM STONE*),

Plaintiff,

against

(*THE MANHATTAN PRINTING* }
COMPANY),

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*DANIEL BOONE*), being duly sworn, says that he is an officer of the defendant (*company*) herein, (*The Manhattan Printing Company*), to wit: (*vice-president and treasurer*), and that he is acquainted with all the pleadings and proceedings had in this action; that this action is brought to recover the sum of (*five thousand dollars*) (\$5,000) damages for personal injuries alleged to have been sustained by the plaintiff through the negligence of this defendant, its agents, servants and employees, on or about the (*7th*) day of (*October*, at its building, No. 45 *Beckman street*, in the Borough of *Manhattan, City of New York*), as appears more fully set forth in the complaint herein.

Affidavit — Negligence.

That the summons and verified complaint herein were served upon the defendant on the (21st) day of (*December, 1904*), and issue was joined by the service of the defendant's verified (*amended*) answer on the (8th) day of (*February, 1905*), which answer (*admitted defendant's incorporation, and that it operated a newspaper and job printing establishment at the time and place mentioned in the first paragraph of the complaint*), and alleged that it had no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs numbered (*II., III., IV. and V.*) of the complaint, and therefore denied the same.

And for a second further defense, it alleged upon information and belief that whatever damages and injuries were sustained by the plaintiff at the time and place mentioned in the complaint, were due to the negligence of the plaintiff and were not the result of any negligence on the part of this defendant or of its agents, servants or employees.

That on the (4th) day of (*March, 1905*), the defendant served upon the attorney for the plaintiff a demand for a verified bill of particulars setting forth the particulars asked for in the demand numbered (*one to five*), inclusive, contained in the notice of motion hereto attached; that said attorney has paid no attention to the said demands and has absolutely failed to comply with them, although the time limited for him to do so has expired.

That defendant intends in good faith to defend this action.

The defendant asks for a statement of (*the hour at which the accident set forth in the complaint occurred, and also the exact location of the machine which it is alleged occasioned the injuries complained of, and for the name of the employee of this defendant in charge of said machine at the time of the accident*); that the reason why the defendant asks for the above information is that (*deponent has made a request to the foreman and employees of this defendant concerning the accident complained of, and after careful inquiry and investigation made by a representative of this defendant, and instituted by the deponent, the defendant is unable to obtain any information whatever concerning the alleged accident*). Your deponent further says to the court that by reason of the fact that (*defendant operates two hundred linotype machines, of the kind mentioned in the complaint, in its building, it is difficult to obtain a statement from its employees of the particular machine, and of the circumstances involved in the accident set forth in the*

Affidavit — Negligence.

complaint, if only the date thereof is within the knowledge of the defendant), and that if (the exact location of the machine is given the employees in charge of the machines in that particular section of deponent's building may be more closely examined, and the alleged negligence of any of said employees may be discovered).

The defendant is ignorant of the nature of the injuries alleged to have been sustained by the plaintiff for the reason that *(no physical examination of the plaintiff has been made on behalf of the defendant, and for the further reason that the allegations in the complaint setting forth the injuries alleged to have been sustained by the plaintiff are general and do not particularly set forth the said injuries)*, and defendant asks that the plaintiff be directed to give a statement of each injury complained of, its nature, location and probable extent or duration, and a statement of which of the injuries are claimed to be permanent.

That defendant is entirely ignorant of the ("*great expense*") to which plaintiff was put for ("*medical and surgical attendance, appliances and medicines*") as alleged in the (*fourth*) paragraph of the complaint, and as the allegation of such expenses constitute an allegation of special damages, deponent respectfully submit that the defendant is entitled to full particulars thereof.

The defendant is ignorant of the respects in which the (*linotype machine*) by which plaintiff claims to have been injured was ("*unsafe and defective in construction,*" and was "*negligently maintained and operated,*") as set forth in the (*fifth*) paragraph of the complaint.

That deponent is informed by defendant's attorney, (*Henry A. Russell*), and verily believes that it is necessary for the defendant in order to enable it to properly prepare for the trial of this action, to obtain a statement of each and every fact asked for in the notice of this motion.

WHEREFORE, the defendant asks that an order be granted directing the attorney for the plaintiff to serve upon the attorney for the defendant within ten days after the service of the same a verified bill of particulars setting forth the facts asked for in the paragraphs (*one to five, inclusive,*) in the notice of motion hereto attached.

The defendant further asks that the order stay the plaintiff and his attorneys from any and all proceedings in this action, except to review or vacate this order, until the service of a verified bill of particulars, and in the event of the failure to serve the same, that

Order.

the plaintiff be precluded from giving upon the trial any evidence in support of the facts, statement of which is now asked, and for such other and further relief as to the court may seem proper.

No previous application for the relief herein sought has been made to any court or judge. (DANIEL BOONE.)

Sworn to before me, this }
(16th) day of (March, 1905). }

(ARCHER PANGBORN),
Notary Public, (No. 18),
(New York) County.

FORM No. 133.

Order Directing Service of Bill of Particulars.

At a Special Term of the Supreme Court, (*Part I.*),
held in and for the County of (*New York*), at the
County Court House, in (*the Borough of Man-*
hattan, City of New York), on the (*18th*) day of
(*March, 1905*).

PRESENT:

Hon. (*HENRY A. GILDERSLEEVE*),
Justice.

(<i>WILLIAM STONE</i>),	}
Plaintiff,	
against	
(<i>MANHATTAN PRINTING COM-</i> <i>PANY</i>),	
Defendant.	

A motion having been made by the defendant herein for an order directing the plaintiff to serve upon the defendant a verified bill of particulars, setting forth the damages alleged in the complaint, and showing in detail:

(*Insert particulars demanded.*)

And the same having regularly come on to be heard,

Now, upon reading and filing the said notice of motion, and the affidavit of (*Daniel Boone*), verified the (*16th*) day of (*March*,

Goods Sold.

1905), in support of said motion, and upon reading and filing the affidavit of (*Leonard Johnson*), verified the (19th) day of (*March*, 1905), in opposition thereto; upon reading the pleadings and upon all the proceedings already had, and upon the demand for a verified bill of particulars heretofore served upon the plaintiff herein, and after hearing *Mr.* (*Bayard H. James*), of counsel for (*defendant*), in support of said motion, and *Mr.* (*Leonard Johnson*), of counsel for (*plaintiff*), in opposition thereto, and due deliberation having been had; on motion of (*Henry A. Russell*), attorney for (*defendant*), it is

ORDERED that the said motion be, and the same hereby is, in all respects granted, except * * * (*insert any modifications imposed by the court*) * * *, and it is further

ORDERED that the (*plaintiff*) within (*twenty*) (20) days after the service upon his attorney of a copy of this order serve upon the defendant a verified bill of particulars setting forth the facts asked for in paragraphs numbered ("*two*" to "*five*"), inclusive, of the notice of this motion, and it is further

ORDERED that if the plaintiff fail to serve said bill of particulars within the time above limited, the said plaintiff and his attorney be, and they hereby are, stayed from giving any evidence upon the trial of this action in support of the facts stated in said paragraphs numbered ("*two*" to "*five*").

Enter. *S. T.* A. G. G.
Done J. S. C.

FORM No. 134.

Bill of Particulars — Goods Sold.

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(*WILLIAM THOMPSON*,)

Plaintiff,

against

(*FREDERICK SMITH*,)

Defendant.

Plaintiff herein by his attorney (*William Reilly*), for a bill of particulars of his complaint herein, alleges:

Goods sold.

I. That the account stated as set forth in the first cause of action in said complaint, took place between defendant, and plaintiff's agent (*Lester Jones*), on or about the said (15th) day of (*May*, 1904), at which time, a bill for (*cigars*), sold defendant by plaintiff prior to the said date, amounting to (\$100.00) was rendered to defendant, and who thereupon paid (\$25.00) on account of the same.

II. That the items amounting to (\$100.00), and set forth in (*paragraph IV. of the second cause of action in*) the complaint herein are for (*cigars*) sold and delivered by plaintiff to defendant on the following days, in the following amounts and agreed prices:

<i>Date.</i>	<i>Amounts.</i>	<i>Prices.</i>
(November 18, 1903), (1 package, 500 cigars)	(\$25 00)
(December 12, 1903), (1 " " ")	(25 00)
(" 29, 1903), (1 " " ")	(25 00)
(January 12, 1904), (1 " " ")	(25 00)
Total		(\$100 00)

Dated (*May 29th*, 1904).

Yours, etc.,

(*WILLIAM REILLY*),

Attorney for Plaintiff,

Office and Post Office Address,

(*No. 27 Pine Street*),

(*New York City*).

To

(*EZRA WILLIAMS*), Esq.,

Attorney for Defendant,

(*No. 15 William Street*),

(*Borough of Manhattan*),

(*City of New York*).

(Verification.)

DEPOSITIONS.

Where, upon a motion for a commission to examine a non-resident witness, the allegations of the moving affidavits concerning the residence of the witness and his absence from this State are upon information and belief, the sources of such information and the grounds of such belief must be stated, and the reasons given why the affidavit of a person having personal knowledge of the matter is not produced; and, if the affidavit was made by the attorney for the moving party, the reason must be given why such affidavit was not made by the party himself. (53 Misc. 532.)

FORM No. 135.

Affidavit on Application for Commission to Take Deposition on Interrogatories.

SUPREME COURT,
(New York) County.

(THOMAS LAWSON),	}
Plaintiff,	
against	
(WILLIAM WILSON),	
Defendant.	}

STATE OF NEW YORK, }
County of (New York), } ss.:

(THEODORE TILDEN), being duly sworn, says:

That he is one of the attorneys for the plaintiff herein.

That this action is brought (to recover damages for personal injuries received by the plaintiff by reason of the negligence of the defendant and his agents), and issue was joined herein on the (10th) day of (March, 1904), by the service of the defendant's answer to the (amended) complaint.

That (William Ransom), who resides at No. (758 Drexel Boulevard), in the (City of Chicago,) in the State of (Illinois), is as deponent verily believes, a necessary and material witness upon the trial of this action on the question of (the nature and extent of the injuries received by the plaintiff and the time during which

Affidavit.

he was confined to his bed and receiving medical and surgical treatment,) because (said Ransom was the only physician who attended the plaintiff at the time he received said injuries, and who examined and treated him for said injuries), and without his testimony it will be impossible to prove (the nature and extent of said injuries and their permanent effect on the physical condition of the plaintiff).

That, as deponent is informed and believes, the said (*William Ransom*) is not within the State of New York, but is in (*the City of Chicago*), in the State of (*Illinois*), and is (*a practicing physician in that city*), and cannot therefore be produced as a witness upon the trial of this action. The sources of deponent's information and the grounds of his belief are as follows: Deponent has (*corresponded with said Ransom, and has received several letters written by him, dated at 758 Drexel Boulevard, Chicago, Illinois, inclosed in envelopes post-marked Chicago, Illinois, copies of which are hereto attached, in which letters said Ransom states that he has leased a house at 758 Drexel Boulevard in that city, where he is engaged in the practice of medicine, and that he intends to make his permanent residence in said city*).

That defendant resides at (*the Hotel Majestic, in the Borough of Manhattan, City of New York*), and his attorneys in this action are (*Carruth & Henderson*), Esqs., whose office is at (*15 William street, in the Borough of Manhattan, City of New York*).

No previous application for this or any similar relief has been made.

(THEODORE TILDEN).

Sworn to before me, this }
(17th) day of (March, 1905). }

(PATRICK KEENAN),
Notary Public,
(New York) County.

Order For Commission.

FORM No. 136.

Order for Issuance of Commission.

At a Special Term, (*Part I.*), of the Supreme Court of the State of New York, held in and for the County of (*New York*), at the County Court House, in (*the Borough of Manhattan, City of New York*), on the (*18th*) day of (*March*, 1905).

PRESENT:

Hon. (*LEONARD A. GIEGERICH*),
Justice.

(<i>THOMAS LAWSON</i>),	}
Plaintiff,	
against	
(<i>WILLIAM WILSON</i>),	
Defendant.	

On reading and filing the affidavit of (*Theodore Tilden*), verified the (*17th*) day of (*March*, 1905), and the notice of motion for a commission to take the deposition of (*William Ransom*) herein on written interrogatories, with proof of due and timely service of each upon the attorneys for the defendant, after hearing (*Henry James*), Esq., on behalf of said motion, and no one appearing in opposition thereto, and after due deliberation, now, on motion of (*Tilden & James*), attorneys for (*plaintiff*), it is

ORDERED that a commission issue in this action directed to (*Ballard Young*) of (*the city of Chicago, Illinois*), to examine under oath on interrogatories thereto annexed (*William Ransom of said city of Chicago*), a witness on behalf of the plaintiff, and that the defendant be at liberty to join in said commission; and it is further

ORDERED that ten dollars costs of this motion abide the event of the action.

Enter:
(*L. A. G.*),
J. S. C.

Settlement Of Interrogatories — Notice.

FORM No. 137.

Notice of Settlement of Interrogatories.*

SUPREME COURT,
(*New York*) County.

(<i>THOMAS LAWSON</i>),	}
Plaintiff,	
against	
(<i>WILLIAM WILSON</i>),	
Defendant.	

Sirs:

PLEASE TAKE NOTICE that the annexed interrogatories will be presented to Hon. (*Leonard A. Giegerich*), a justice of this court, at his chambers, in the *County Court House*, in the (*Borough of Manhattan, City of New York*), on the (*29th*) day of (*March, 1905*), at (*2:00 P.*) M., to be annexed to the commission allowed herein by an order of this court, made and entered on the (*18th*) day of (*March, 1905*).

(*New York, March 27, 1905.*)

Yours, etc.,
(*TILDEN & JAMES*),
Attorneys for (*Plaintiff*),
(*30 Broad*) Street,
(*Borough of Manhattan,*
City of New York).

To

(*CARRUTH & HENDERSON*), Esqs.,
Attorneys for (*Defendant*),
(*15 William*) Street,
(*Borough of Manhattan,*
City of New York).

* Should be served within two days after cross-interrogatories have been served or the time to serve same has expired.

Interrogatories.

FORM No. 138.

Form of Interrogatories.

SUPREME COURT,
(New York) County.

(THOMAS LAWSON,)	}
Plaintiff,	
against	
(WILLIAM WILSON,)	
Defendant.	

Interrogatories to be administered to (*William Ransom*), of (*Chicago, Illinois*), to be examined under the annexed commission on behalf of the (*plaintiff*):

1. What is your name, age, occupation or profession, and place of residence?

2. How long have you been engaged in such occupation or profession? (Add questions showing experience as a physician and surgeon).

3. Did you (*treat Thomas Lawson, the plaintiff in this action, for injuries received by him on or about January 2, 1905? If so describe said injuries and said Lawson's physical condition when you were called to attend him*).

4. State in a general way (*how long your treatment of said Lawson continued, and in what your treatment consisted, how long he was confined to his bed by reason of said injuries, and what permanent injuries, if any, he received at that time. If said injuries have produced any effect that is permanent or likely to become permanent on the physical condition of said Lawson, describe the same fully*).

5. What is the reasonable value (*of the services rendered by you in the treatment of said Lawson for said injuries*)?

6. Do you know of anything concerning the matters in question that may tend to the benefit and advantage of the plaintiff? If you do, state the same fully and at length, as if you had been particularly interrogated concerning the same.

(TILDEN & JAMES),

Attorneys for (*Plaintiff*),

(30 Broad) Street,

(Borough of Manhattan,

City of New York).

Commission.

The interrogatories are usually settled by an indorsement on the back initialed by the judge as follows:

“The within interrogatories and cross-interrogatories are hereby allowed and ordered annexed to the commission.”

(J. F.)

J. S. C.

FORM No. 139.

Commission to Take Testimony.

THE PEOPLE OF THE STATE OF NEW YORK:

To (*Ballard Young*), Esq.,
(*Auditorium Building*),
(*Chicago, Illinois*):

KNOW YE, that we, with full faith in your prudence and competency, have appointed you commissioner, and by these presents do authorize you to examine (*William Ransom*), of (*the city of Chicago, State of Illinois*), as witness in an action pending in the *Supreme Court* of the State of New York, (*New York*) county, in which (*Thomas Lawson*) is plaintiff and (*William Wilson*) is defendant on the part of the (*plaintiff*) on oath, upon the interrogatories annexed to this commission, and to take and certify the depositions of the witness and return the same and the commission according to the directions given in or with the commission, and hereunto annexed.

The commission when executed is to be returned to the clerk of the *Supreme Court*, of the State of New York, County of (*New York*), at his office in (*the Borough of Manhattan, City of New York*).

WITNESS, Honorable (*Leonard A. Giegerich*), one of the justices of said court, at (*the City of New York*), the (*18th*) day of (*March*), one thousand nine hundred and (*five*).

(*THOMAS L. HAMILTON*),

Clerk.

Note.— Here must follow §§ 901 and 902 of the Code of Civil Procedure containing directions for the execution of the Commission. Additional instructions to the Commissioner should also be appended. Printed blanks containing these directions and instructions are always used for this purpose.

EXAMINATION BEFORE TRIAL.

(After Action Commenced).

The affidavit should be made by the party and on personal knowledge.

But, when on information and belief, state:

- (a) Grounds of belief.
- (b) Sources of information.

It is very dangerous to have affidavit made by any one but party. As to when other than party can make affidavit, see

74 App. Div. 404,
and 87 App. Div. 425.

- (1) Title and venue.
- (2) Full name of affiant (being duly sworn says):
- (3) Relation to cause.
- (4) Residence and business address (street and number) of affiant.
- (5) Full names and residence (street and number) of all the parties to the action.
- (6) All appearances.
- (7) Full names and office and post-office addresses (street and number) of any attorney who has appeared for any party and for whom he appears.
- (8) That this action was commenced by service of summons and complaint on defendant personally and giving date.
- (9) Issue joined by service of what pleading and date of such service.
Change in attorney, note of issue filed and notice of trial, and now on calendar.
- (10) Nature of action in great detail, and substance of judgment demanded.
- (11) Refer to annexation of copies of pleadings and making them part of the affidavit.
- (12) Nature of the defense (interposed) to action.
- (13) Name and residence (street and number) of the person sought to be examined.
- (14) Allegations showing lack of exact information which is material and necessary to prepare for trial, *e. g.*, plaintiff is ignorant of the fact whether (*Jones and Smith*) acted upon instructions, but is informed and believes

What Affidavit Should Show.

- (15) That deponent expects and desires to prove the above facts in detail by the testimony of party sought to be examined.
- (16) Facts in detail which show what testimony is desired, and expected, that person will give.
- (17) That deponent further alleges that he has fully and fairly stated the case in this action, and what deponent expects to prove as aforesaid at the examination of the said (*Jones*,) to the said (*William Buell*,) who is one of the counsel for the plaintiff in this action, and who resides at (*72 Fifth avenue, in the Borough of Manhattan, City of New York*,) and that he is advised by said counsel after such statement, so made, and verily believes that the examination of said defendant is indispensably material and necessary to this deponent, this plaintiff, for the prosecution of this action, and that plaintiff cannot safely proceed to trial without such examination of said defendant
- (18) Facts to show that the testimony must necessarily be taken before rather than at the trial (although perhaps this is no longer necessary) in First Department. (*111 App. Div. 528.*)
- (19) That the testimony is to be used upon the trial of the action.
- (20) That plaintiff cannot obtain the information sought from any source other than the testimony of said defendant; giving facts showing attempt to find other witnesses having knowledge and all such attempts and failures. (This now perhaps not necessary in First Department. *McKeand v. Locke*, 115 *App. Div.* 174; *Hill v. McKane*, *Id.*, 537; *Istok v. Senderling*, 118 *App. Div.* 162, but see 53 *Misc.* 253.)
- (21) That the application is made in good faith.
- (22) Any other facts to show that the order should be granted.
- (23) That no other or previous application has been made herein to any court or judge for this or any similar order, wherefore this deponent prays for an order directing that the defendant appear and be examined pursuant to the provisions of sections 872-880 of the Code of Civil Procedure, and that the said defendant appear and submit to an examination.

What Affidavit Should Show.

(24) Signature of affiant.

(25) Jurat.

When party sought to be examined is a corporation, state in addition to above:

(a) Names of officers.

(b) Names of directors, or any of them whose testimony is material and necessary.
and

(c) The books and papers of the corporation, the contents of which are required to be produced to refresh the memory of witness.

Examination of a Witness.

Omit 20 and insert, in proper place:

Facts to show witness is about to depart from the State,

or

Facts to show that witness is so sick or infirm as to afford reasonable ground to believe that he will not be able to attend the trial,

or

Facts to show that special circumstances exist which render it proper that he should be examined.

Prior to the commencement of an action a party or a witness can be examined for the *sole* purpose of perpetuating testimony (105 App. Div. 115.)

Of Party — Affidavit.

FORM No. 140.

Affidavit to Obtain Examination of Adverse Party.

NEW YORK SUPREME COURT,
(*New York*) County.

(*JOHN DOE*),

Plaintiff,

against

(*RICHARD ROE*),

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JOHN DOE*), being duly sworn, says: I am the plaintiff in the above-entitled action. I reside at (*No. 128 East 22nd street*), in the *Borough of (Manhattan)*, city of (*New York*). My attorneys are (*Cole & Dunn*), whose office and post-office address is (*No. 203 Broadway*), in said city. The defendant is (*Richard Roe*), who resides at (*115 East 21st street*), *Borough of (Manhattan, City of New York)*, and has his principal place of business at (*No. 10 Warren street, Borough of Manhattan, City of New York*), defendant has appeared by (*S. Y. Meeks*), his attorney, whose office and post-office address is (*No. 13 Broadway, Borough of Manhattan, City of New York*). The summons and complaint were served upon the defendant on the (*20th*) day of (*December, 1903*), and he served his answer on (*December 29th, 1903*), as deponent is informed by *Richard Cole*, one of his attorneys herein, and verily believes.

I desire to examine the defendant before the trial of this action in order to obtain proof which I may use at such trial for the allegations in my complaint. My reasons for such application are as follows.

This action is brought to recover damages for personal injuries which I received while a tree was being removed from the premises (No. 126 East 22nd street, Borough of Manhattan, City of

Of Party — Affidavit.

(New York). The injuries I allege in my complaint were caused by the carelessness and negligence of the defendant and of his servants, who were engaged in the removal of said tree. I further allege that at the time of the said accident, the defendant was the owner of and in possession and control of the aforesaid house No. 126 East 22nd street, Borough of Manhattan City of New York, and that workmen employed by and subject to his orders were engaged in removing the tree in question from the yard of said premises. Both of these allegations are made upon information and belief.

I am informed by my attorneys that said defendant in his answer *(admits that at the time of the aforesaid accident he was the owner of the premises 126 East 22nd street, Borough of Manhattan, City of New York,)* but denies that *(he was in possession or control thereof,)* and further denies that *(he employed the workmen who removed the tree from the yard of said premises,)* or that *(he caused said tree to be removed,)* or that *(the workmen employed in and about said premises were in any way subject to his order or control.)* I am further informed by my said attorneys that it will be necessary for me to prove at the trial of this action the aforesaid allegations of my said complaint, and that I cannot reasonably and safely proceed to the trial of this action without proof *(that the workmen who were engaged in removing said tree were employed by and subject to the orders of defendant.)* I have no means of proving said fact except by the testimony of defendant. My complaint is drawn upon information and belief. Said information and belief being derived from the fact that I have been told that the said defendant *(superintended such removal, gave orders to the workmen, and is in fact the owner of the said house.)* I am informed by my attorney that these facts will not be sufficient on the trial of this action to entitle me to recover, but I must have positive proof that the defendant *(was actually the employer of said workmen.)* I have no means of knowing *(who these workmen are, or where they can be found. I have caused inquiries to be made to obtain their names and addresses, but I cannot obtain them.)* I am further informed that *(at the time of the accident said workmen refused to make any statement whatever as to the person under whose directions they were acting and refused to talk about the matter at all.)*

All the facts as to *(the hiring of said workmen and as to the control of their actions, and as to who was in possession of the said*

Of Party — Affidavit.

house) are entirely within the knowledge of the defendant, who has special and exclusive knowledge of these facts, which are not possessed by me and access to which is not open to me. (*The premises upon which the tree in question stood adjoined in the rear the residence of defendant. Extensive alterations were being made to said premises at the time of the accident, one of which alterations was the removal of the tree in question, and I have seen a man who, I am told, is in his employ apparently assisting the workmen, and the workmen have used the property of the defendant through which to carry materials for such alterations to said premises. From these facts and from the fact that (the defendant is the owner of said premises,) I verily believe that (he was the employer of said workmen,) but I have no means of proving it, and without the examination of defendant before trial I cannot obtain testimony which I may offer at the trial of this action in support of said belief.*

I further do not know whether such testimony as said defendant can give will be sufficient at the trial of the action without further proof from other sources, and for that reason it will not be safe, as I am informed by my counsel, for me to wait until the trial of this action before obtaining the examination of defendant. I furthermore do not know whether it will be possible for me to obtain the presence of said defendant at the trial of this action by subpoena, inasmuch as I have no means of knowing whether he will be present within the State of New York when the action is reached in its ordinary course and called for trial.

This application is made in good faith for the purpose of obtaining proof to use upon the trial of this action, and for no other purpose. I intend to use at the trial of this action the testimony elicited by the examination of said defendant, and shall then and there read or offer to read the same. No previous application has been made for the annexed order.

(JOHN DOE.)

Sworn to before me, this }
(2nd) day of (January, 1904). }

(PERCY L. WORK),

Notary Public,

(New York) County (No. 64).

FORM No. 141.

Affidavit in Support of Same.

NEW YORK SUPREME COURT,
(New York) County.

(JOHN DOE,)

Plaintiff,

against

(RICHARD ROE,)

Defendant.

STATE OF NEW YORK, }
County of (New York), } ss.:

(RICHARD S. COLE), being duly sworn, says: I am one of the attorneys for the plaintiff herein. The summons and complaint were served upon the defendant on the (20th) day of (December, 1903), and issue was joined by the service of the defendant's answer on the (29th) day of (December, 1903). The cause of action set out in the complaint is (*to recover damages for personal injuries sustained by plaintiff, owing to the carelessness of defendant's servants in removing a tree from the yard of certain premises in the Borough of Manhattan, City of New York, belonging to him.*) The answer admits (*the injury to plaintiff,*) denies that (*the workmen who caused it were defendant's servants,*) and alleges that (*it was caused by plaintiff's own negligence.*) No proceedings have been taken herein since joinder of issue as aforesaid. I have not noticed the case for trial inasmuch as I have advised plaintiff that it is not safe for him to proceed to trial before obtaining an examination of the defendant. This testimony is material and indispensably necessary for the proper prosecution by him of this action. This application is made in good faith and solely to substantiate the allegations in the complaint, which were made upon information and belief, and the reason of its being made is that such information while sufficient to enable me to draw a complaint upon plaintiff's behalf upon information and belief, is not sufficient to sustain said complaint upon the trial of the allegations. (*I have examined the records in the office of the register of the County of New York, and it appears therefrom*

Of Party — Order.

that defendant owns the premises from which the tree, the fall of which injured the plaintiff, was being removed, and that he has made no lease or conveyance thereof. (RICHARD S. COLE.)

Sworn to before me, this }
(3rd) day of (January, 1904). }

(PERCY L. WORK),

Notary Public,

(New York) County (No. 64).

FORM No. 142.

Order for Examination of Adverse Party Before Trial.

NEW YORK SUPREME COURT,

(New York) County.

(JOHN DOE,)

Plaintiff,

against

(RICHARD ROE,)

Defendant.

Upon the annexed affidavits and upon the pleadings herein:

ORDERED: That the defendant (*Richard Roe*), be examined as an adverse party before trial and his deposition taken, pursuant to sections 870 to 873 of the Code of Civil Procedure, and that for that purpose he appear before me, a justice of this court, in and for the County of (*New York*) at (*Special Term, Part II., in the County Court House, in the Borough of Manhattan, City of New York,*) on the (*9th*) day of (*January, 1904,*) at (*10:30*) o'clock in the (*fore*)noon, and submit to the examination concerning the matters set forth in said affidavit, and concerning the pleadings in this case, and

IT IS FURTHER ORDERED that service of this order and of the accompanying affidavits, if made upon said defendant on or before (*January 4th, 1904,*) shall be sufficient.

(HENRY BISCHOFF),

J. S. C.

Dated, (*New York, January 3rd, 1904.*)

Of Party — Order.

FORM No. 143.

**Order for Examination of Adverse Party Before Trial — Defendant
a Corporation.**NEW YORK SUPREME COURT,
County of (*New York*).

(<i>GODFREY GOLDEN,</i>)	}
Plaintiff,	
against	
(<i>UNITED GALVANIZING COM- PANY,</i>)	
Defendant.	

On reading the annexed affidavit of (*Godfrey Golden*), sworn to herein on (*January 9, 1906*), and the pleadings thereto annexed, and on motion of (*Steele & DeForest*), attorneys for the above-named plaintiff, it is

ORDERED that the above-named defendant, (*United Galvanizing Company*), be examined, and its deposition be taken, pursuant to section 873 of the Code of Civil Procedure; and for that purpose it is hereby ordered that (*Louis Potter*) as (*president*) of said company appear before me, at a Special Term of this Court to be held at the County Court House in (*the Borough of Brooklyn, City of New York*), on the (*17th*) day of (*January, 1906*), at (*ten*) o'clock in the forenoon, and submit to an examination concerning the matters set forth in said affidavit.

FURTHER ORDERED that said (*Potter*) produce upon said examination the (*order books, contract books, ledgers, bank books and check books*) of said (*defendant*), and any other books or papers containing entries of the matters involved in this action; such production of the books being only for the purpose of refreshing the recollection of said (*Potter*), and aiding his memory in the oral examination; such books not being produced for the purpose of examination or inspection by (*plaintiff*) or his counsel.

Service of a copy of this order, and of the papers hereto annexed, upon said (*Louis Potter*) personally, on or before the (*12th*) day of (*January, 1906*), shall be sufficient service thereof.

Dated, (*January 10, 1906*). (*WILLIAM J. KELLY*),
Justice of the Supreme Court.

Of Party — Affidavit.

FORM No. 144.

Affidavit of Party for Examination Before Trial — Defendant a Corporation.

NEW YORK SUPREME COURT,
County of (*New York*).

(<i>GODFREY GOLDEN</i>),	}
Plaintiff,	
against	

(<i>UNITED GALVANIZING COM- PANY</i>),	}
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*GODFREY GOLDEN*), being duly sworn, deposes and says as follows:

Deponent is the plaintiff in the above-entitled action, and resides at (*No. 251 West One Hundred and Fourth street, in the Borough of Manhattan, City of New York*). Defendant is a foreign corporation, organized and existing under the laws of (*West Virginia*), and has its factory and its principal office for the transaction of business at (*No. 1 Park avenue, in the Borough of Brooklyn, City and State of New York*).

This action was commenced on (*April 14, 1904*), by the personal service of the summons and a copy of the complaint herein upon the Secretary and Treasurer of the defendant. On (*April 14, 1904*), the said defendant appeared herein by its attorney, (*Mortimer Fisher*), Esq., of (*No. 73 Pine street, in the Borough of Manhattan, City of New York*), and on (*April 30, 1904*), served its answer to the complaint herein. This cause is now pending and is numbered (2606) on Calendar (*No. III*) of the Trial Term of this Court.

The nature of the action, and the substance of the judgment demanded, is as follows: This is an action brought to recover damages for (*a breach of a written contract of agency, dated September 13, 1900, wherein and whereby the defendant agreed to pay the plaintiff's assignors, Messrs. Steele & DeForest and*

Of Party — Affidavit.

Frank E. Holton, certain commissions on all royalties received by it from business obtained or introduced through the efforts of said assignors). The complaint alleges (three separate causes of action for commissions payable on royalties received by the defendant from the United States Navy Yards at Norfolk, Virginia, Boston, Massachusetts, and Philadelphia, Pennsylvania, respectively, on the granting of licenses to said Navy Yards by the defendant). Said complaint demands judgment for the sum of (\$1,800).

The nature of the defense is as follows: The answer of the defendant denies that (*sales were made to the Navy Yards at Norfolk and Boston, but admits that a sale was made to the Navy Yard at Philadelphia, without stating the terms of said sale*). Said answer also denies that (*said sale, or any sale, was made through the efforts of the plaintiff's assignors*). Copies of said complaint, answer and contract of employment are hereto annexed and made a part hereof.

Deponent desires to examine (*Louis Potter*), the President of the defendant, who has a place for the regular transaction of business at the office of the defendant, (*No. 1 Park avenue, in the Borough of Brooklyn, City of New York*), and who deponent is informed and believes resides at (*No. 642 East Twenty-third street, in said Borough*). The source of deponent's information as to the residence of said (*Potter*) is the (*Directory of the Borough of Brooklyn for the year 1905*). The testimony of said (*Louis Potter*) is material and necessary for deponent for the following reasons: The testimony necessary to establish on the trial (*the actual making of the several sales*) alleged in the complaint, and the exact terms thereof, can be obtained from but two sources: The defendant and the officials of the several Navy Yards in question. The attorneys for deponent have sought to obtain information in regard to the installation of the galvanizing plants of the defendant from the officials of the said Navy Yards. Such information was refused by said officials. The proof of said sales, and of the terms thereof, is peculiarly within the knowledge of the defendant; for, while the plaintiff's assignors can testify as to the introduction of the business and the negotiations had by them, the proof of the actual consummation of the several transactions, and the terms and conditions thereof, must come from the principals therein. The testimony of an officer of the defendant

Of Party — Affidavit.

is material and necessary for the plaintiff to have upon the trial of this action, and the plaintiff intends in good faith to use such testimony upon said trial. In the verification of the answer herein, said (*Potter*) swears that he personally took part in negotiations with the several Navy Yards, and is personally familiar with the matters involved in this action, and has in his possession the correspondence between the defendant and plaintiff's assignors, and between the defendant and the officials of the said Navy Yards.

Deponent verily believes that said (*Potter*) is more familiar with the matters involved herein than any other officer of the defendant. If plaintiff were left until the trial of this action before having an opportunity to examine an officer of the defendant he would be unable to establish his case, should the officers of said defendant fail to appear at said trial, or should they evade the service of the subpoena. Deponent, therefore, asks that an order be made herein directing said (*Potter*) to appear for examination in regard to the several matters referred to in this affidavit, and that upon said examination said (*Potter*) be directed to produce the order books, contract books, ledgers, bank books and check books of said defendant, and any other books or papers containing entries of the matters involved in this action; such production of the books being only for the purpose of refreshing the recollection of said (*Potter*), and aiding his memory in the oral examination, such books not being produced for the purpose of examination or inspection by plaintiff or his counsel.

No previous application has been made for the order applied for hereon. (GODFREY GOLDEN.)

Sworn to before me, this }
(9th) day of (January, 1906). }

(JOHN PORTER),

Notary Public, No. (192),

(Kings) County.

(Cert. filed in N. Y. Co.)

Of Corporation — Order.

FORM No. 145.

Order for Examination of Corporation.

NEW YORK SUPREME COURT,
County of (*New York.*)

(*JACOB SMITH*) *et al.*,

vs.

(*MEXICAN COMPANY*) *et al.*

Upon the annexed affidavit of (*Jacob Smith*), verified the (1st day of February, 1906), and upon reading the summons and the pleadings herein, and upon motion of (*Nathan Budd*), Esq., attorney for the plaintiffs, it is

ORDERED that the defendants (*Mexican Company*), be examined and its deposition be taken pursuant to sections 871, 872 and 873 of the Code of Civil Procedure, and that for that purpose (*Henry Jones, its President, and Frank Voss, its Treasurer and Secretary*) and each of them appear before me or one of the Justices of the Supreme Court of the State of New York, in and for the County of (*New York*), at Special Term, Part (*II*), held in and for said county, at the County Court House in said county, on the (13th) day of (*February, 1906*), at (10:30) o'clock in the forenoon and submit to examination concerning the matters stated in said affidavit and relevant to the issues in this action; and it is further

ORDERED that at the same time, and in aid of said examination, the said defendant, (*Mexican Company*), produce the books and papers hereinafter described, to wit:

1. *The mortgage executed by the Mexican Company, to the New Trust Company upon its plantation at Pam, State of Vera Cruz, Mexico.*

2. *The contract between defendant Mexican Company and Adam Adams for the erection of a sugar refinery on the plantation of said Mexican Company at Pam, Mexico, and the specifications thereto annexed.*

Of Corporation — Order.

3. *The letter of Sugar Company of New Jersey, addressed to John Boland as President of the Mexican Company and dated on or about November 29, 1902, notifying the Mexican Company of the assignment to the Mexican Company of the lease theretofore made by the Mexican Company to Max Murry and John Boland and of the exercise of the option of renewal contained in said lease.*

4. *The Ledger or other book of account of the Mexican Company containing entries of all transactions between said Mexican Company and the Sugar Company of New Jersey from April 1, 1902, to the present time.*

5. *The Ledger or other books of account of the Mexican Company, containing entries of the payment by it to the New Trust Company for the purpose of meeting the interest on its bonds and showing the payment by it of all taxes assessed upon its said plantation in Mexico during the period from April 1, 1902, to May 9, 1904.*

6. *The Stock Book and Stock Transfer Ledger of the Mexican Company.*

7. *The press copy book or books of the Mexican Company, containing copies of its letters from the 1st day of January, 1904, to June 1, 1904.*

8. *The Minute Book of the Mexican Company, from November 1, 1900, to June 1, 1904.*

9. *Any proxies filed with the Mexican Company, and voted upon at the meeting of the Board of Directors at which a settlement was arrived at of the claim of the Mexican Company, against Adam Adams for damages for his failure to complete the refinery in accordance with his contract with said Mexican Company.*

10. *The Charter and By-Laws of the Mexican Company.*

11. *Any proxies filed with the Mexican Company upon which George Glass voted at any of the meetings of the Board of Directors from October 2, 1903, to the present time.*

12. *Any proxies filed with the Mexican Company, and voted upon at any stockholders' meeting of said company in October, 1903.*

13. *Any letters directed by Henry Jones or Frank Voss to George Glass as to his voting at the meetings of the Board of Directors of the Mexican Company.*

14. *Any vouchers given to the Mexican Company for the payment by it of \$1,898.58 or any similar amount, to the represen-*

Of Corporation — Order.

tative of John Conroy for the proportionate premium for fire insurance on any buildings on the plantation of the Mexican Company, effected prior to June 10, 1903.

15. The check of the Mexican Company whereby it paid said amount of insurance.

16. Any written agreements between the Mexican Company and John Conroy or Adam Adams for the payment by said Company of said amount of insurance.

17. Any letters from Adam Adams or John Conroy relating to the payment by the Mexican Company of said amount.

18. Any written agreement for the settlement of any disputed matters between the Mexican Company, on the one hand and Adam Adams and John Conroy, or both, on the other hand, relating to the erection of the refinery on the plantation of said Company at Vera Cruz.

19. The draft drawn by the insurance agents of the Mexican Company upon said Company and accepted by it and by the Sugar Company and honored by the Mexican Company, and described in the verified proof of claim filed by said Mexican Company, with the receiver of the Sugar Company.

20. The check of the Mexican Company, given by it in payment of the draft described under the last number, or any voucher received by said company upon paying said draft.

21. Any letters of the insurance agents of the Mexican Company, or any one else, relating to the payment of the draft referred to under the last two numbers.

22. The proxies filed with the Mexican Company and voted upon at the meeting of the Board of Directors of that Company, at which the lease to the Sugar Company was canceled.

23. Any letters or telegrams from Henry Jones or Frank Voss or George Glass relating to the proposed or accomplished resolution to cancel the lease.

24. Any communication from Henry Jones or Frank Voss or any officer of the Mexican Company to Harris Hunt or other agents of the Company relating to the cancellation of the lease and the change of possession of the plantation, or the acquisition of any of the assets of the Sugar Company.

25. The check of the Mexican Company whereby it paid for the assets of the Sugar Company pledged by the latter to James Wood, and sold by him to the Mexican Company, and any bill of sale or other instrument of transfer executed and delivered to the Mexican Company relating to said assets.

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26. *The certificates of indebtedness for \$6,750 and \$36,789.69 respectively, executed by the Mexican Company to the Sugar Company on or about April 25, 1904.*

27. *Any checks of the Mexican Company made payable to James Wood or Henry Jones and any drafts drawn upon the Sugar Company and now in possession of the Mexican Company.*

Let a copy of this order be served on each of said officers of said (*Mexican Company*), to wit, on said (*Henry Jones and said Frank Voss*), within this State on or before the (7th) day of (*February*, 1906).

Dated (*February 1st*, 1906).

(*H. A. GILDERSLEEVE*),

Justice of the Supreme Court of the
State of New York.

FORM No. 146.

Affidavit in Support of Order for Examination of Corporation.

SUPREME COURT,

(*New York*) County.

(*JACOB SMITH*) *et al.*,

Plaintiffs,

against

(*MEXICAN COMPANY*), *et al.*

Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JACOB SMITH*), being duly sworn, deposes and says:

First.—That he is one of the plaintiffs in the above entitled action and is acquainted with the facts of the case. That the plaintiffs in the above entitled action are the deponent, residing at (189 Second street in the Borough of Manhattan, City of New York,) and (Artur Jacobs, residing at No. 2 West 10th street in the Borough of Manhattan, City of New York.) That the de-

Of Corporation — Affidavit.

endants are (*the Mexican Company, a corporation incorporated under the laws of the State of Louisiana, and the Sugar Company, a corporation organized under the laws of the State of New Jersey.*) That the attorney for the plaintiffs is (*Nathan Budd*), Esq., whose office address is (*134 Nassau street, Borough of Manhattan, City of New York;*) and the attorney for the defendants is (*Austin Flack*) whose office address is (*No. 132 Liberty street, Borough of Manhattan, City of New York.*)

Second.—That this action was commenced by the service of the summons upon the defendant on or about the (*18th day of May, 1904,*) and that thereafter and on the (*7th day of June, 1904,*) said defendants appeared by their attorney, (*Austin Flack,*) Esq., and that on (*July 14, 1904,*) the complaint was duly served upon said attorney for the defendants. That the answer of the (*Sugar Company*) was served on or about the (*23rd*) day of (*August, 1904,*) and that the answer of (*the Mexican Company,*) was served on the (*21st*) day of (*June, 1905,*) since which time the action has been at issue as to both defendants; and that on (*September 18, 1905,*) notice of trial was served on the part of the plaintiffs for the (*October*) term of the court. That the issues in this action have been placed upon the calendar of the (*Special*) Term of this court, (*and that a stipulation has been entered into between the counsel for the respective parties adjourning the call of this case to the March call of the Special Term calendar.*)

(*That this action is brought by the plaintiffs as stockholders of the defendant Sugar Company to set aside as fraudulent and void an attempted cancellation by the Mexican Company of a lease of its sugar plantation in Mexico to the Sugar Company, on the ground that at the time of the attempted cancellation both said corporations were controlled by Henry Jones and Frank Voss; that they had a much larger interest in the Mexican Company, than in the Sugar Company, and that they by reason of their control of both corporations and in violation of their duties as officers and directors of the Sugar Company, and for the purpose of favoring their larger interest in the Mexican Company, brought about said cancellation for and on behalf and for the benefit of the Mexican Company. The nature of the defenses are: (1) a general denial of any fraud on the part of said Jones and Voss and of the Mexican Company (2) That prior to the commencement of this action the plaintiffs commenced an action in the United States Circuit Court for the Third District of New Jersey against the*

Of Corporation — Affidavit.

Sugar Company, praying that it be declared insolvent and that a receiver of its assets be appointed and the rights, liens and equities of all its creditors be ascertained and determined, and that said action was pending when this action was commenced; (3) that in said action in the United States Circuit Court the court made an order appointing a receiver of the assets of the Sugar Company, and that said receiver has qualified and that he is a necessary party to this action; (4) that the plaintiffs have a full and complete and adequate remedy at law; and (5) that the court has not jurisdiction of the subject of the action.)

Third.—(That the plaintiffs desire to take the testimony before trial of the Mexican Company, one of the defendants herein, for the purpose of perpetuating the same, and that they intend to read the same at the trial of this action. That the names of the officers of said Mexican Company whose testimony is necessary and material, as hereinafter fully set forth, are Henry Jones, president of said Company, who resides at No. 23 West 171st street in the City of New York, and Frank Voss, secretary and treasurer of said company, who resides at 21 West 9th street in the Borough of Manhattan, City of New York, both of whom are also directors of said company.)

Fourth.—That the testimony of said (Mexican Company,) and its said officers and directors, is material and necessary for the plaintiffs by reason of the following circumstances:

(1. That it is alleged in said complaint and denied by the defendants that the lease, on account of the cancellation of which this action was brought, provides for the payment, in lieu of rental, of the interest on certain bonds issued by said Mexican Company, secured by a mortgage executed by the said Mexican Company, upon its property, which allegation is denied by the defendants and that it is material and necessary for the plaintiffs to introduce in evidence at the trial the said mortgage, or to ascertain from said officers of said Mexican Company where the original mortgage is deposited.

2. That it is alleged in said complaint, and denied in the answers of the defendants, that the said lease executed by the Mexican Company and assigned to the Sugar Company, was extended by the exercise by the Sugar Company, of the option therein contained and that it is necessary and material for the plaintiffs to introduce in evidence at the trial a letter addressed

by the Sugar Company to said Mexican Company, or one of its officers, notifying said company of the exercise of said option.

3. That it is alleged in the complaint, and denied by the defendants, that the Sugar Company advanced to the Mexican Company the sum of upwards of \$30,000, during the continuance of the lease, to enable the said Mexican Company to pay the interest upon the bonds of the latter company issued and outstanding under its said mortgage when the same came due, and that said Mexican Company is still indebted to said Sugar Company for said advances. That it is material and necessary for the plaintiffs to prove the receipt by the Mexican Company, of said advances, and the application of the same by it to the payment of the interest upon its bonds issued and outstanding, as alleged in the complaint.

4. That it is alleged in the complaint, and denied by the defendants, that Jones and Voss, since the summer of 1903 owned or controlled a large majority of the stock of said Mexican Company, and that through said control, coupled with their control of a majority of the stock of the Sugar Company, said Jones and Voss brought about the cancellation of said lease complained of in the complaint. That it is material and necessary for the plaintiffs to prove at the trial that said Jones and Voss did so control the stock of the Mexican Company, and that it is material and necessary for them for that purpose to introduce in evidence the stock book and stock transfer book of said Mexican Company.

5. That it is alleged in the complaint and denied by the defendants, that the refinery which in said lease the Mexican Company agreed to complete upon its premises, according to its contract with one Adam Adams was not completed according to said contract, and that it is material and necessary for the plaintiffs to show such non-completion of the said refinery as one of the grounds why there was no rent due to the Mexican Company under its said lease at the time when it pretended to cancel the said lease for an alleged non-payment of rent. That neither the original nor a copy of the contract between the Mexican Company and said Adams for the erection of said refinery referred to in said lease is annexed to said lease, and that the facts relating to said contract and to the question whether the refinery was completed according to said contract, are entirely within the knowledge of the officers of said company, and that the papers and books of said company will show that said refinery was not so completed.

6. That it is alleged in the complaint, and denied by the defendants, that the Sugar Company had a claim against the

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Mexican Company for the latter's failure to complete the refinery according to the terms of said lease. That it is material and necessary for the plaintiffs to show that said Mexican Company asserted a claim for and collected damages from said Adam Adams, who had contracted with said Mexican Company to erect said refinery for his failure to complete the same according to his contract, and that the books and papers of said Mexican Company will show such to be the fact, as deponent has been informed by officers of said company.

7. *That it is alleged in said complaint, and denied by the defendants, that said Jones and Voss controlled the Board of Directors of the Mexican Company. That it is material and necessary for the plaintiffs to obtain the testimony of the Mexican Company and its officers, and to introduce its records, to show such control.*

8. *That it is alleged in the complaint that the said lease was cancelled by said Mexican Company for an alleged non-payment of insurance premiums alleged to be due from said Sugar Company in lieu of rent under said lease, but that at the time of cancellation the rent thus claimed by said Mexican Company was not due, which latter allegation is denied by the defendants. That it is material and necessary for the plaintiffs to prove at the trial that the insurance premiums alleged to have been paid by said Mexican Company, and repayment of which was claimed by it to be due from the Sugar Company were not such payments as the Sugar Company was by the terms of the lease required to refund to said Mexican Company, and that it is necessary and material for the plaintiffs for that purpose to introduce the testimony of said Mexican Company, and its officers; and certain of its records and papers hereinafter set forth.*

9. *That it is alleged in the complaint, and denied by defendants, that the cancellation of said lease was brought about by a resolution passed by Jones, Voss and Glass, the latter acting under the control of said Jones and Voss and that it was brought about in furtherance of the plan of said Jones and Voss to wreck said Sugar Company. That it is material and necessary for the plaintiffs to show by the testimony of said Mexican Company and its officers, and from its records, the manner in which said resolution was passed, and the persons who voted therefor, and the manner in which such votes were cast.*

10. *That it is alleged in the complaint, and denied by the defendants that in final consummation of the plan of said Jones*

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and Voss to wreck the Sugar Company The Mexican Company took possession of the plantation covered by said lease, and of all the property of the Sugar Company thereon situated. That it is material and necessary for the plaintiffs to show by the testimony of the Sugar Company, and its officers, and from its records, that it did so take possession of said plantation and that it has come into possession of all the assets of said Sugar Company, and that it has since said cancellation operated said plantation and property at a large profit.)

Fifth.— That the facts as to all the matters hereinbefore referred to are either within the particular knowledge of said (Jones and Voss,) as officers of said (Mexican Company,) or that the evidence of the same is contained in the books, records and papers of said company hereinafter specified, and that from his acquaintance with all the facts in this case, and from his knowledge of the affairs of the (Mexican Company of which deponent during all the times mentioned in the complaint was and now is a stockholder, and of which, until October, 1904, he was a director, and from many personal dealings had by deponent with said Jones and Voss, and by reason of his knowledge that said Jones and Voss have had charge of the management of the affairs of said Mexican Company during all the times mentioned in the complaint, deponent expects that said Jones and Voss will testify to the aforementioned facts, as alleged in the complaint, and that the records of said Mexican Company, so far as their production is required by the order to which this affidavit is annexed, will substantiate said allegations of the complaint.)

Sixth.— That the following are the books and papers of the Mexican Company as to the contents of which, relating to the matters hereinabove set forth, an examination of said Mexican Company and its said officers with their production is desired:

(1. The mortgage executed by the Mexican Company, to the New Trust Company upon its plantation at Pam, State of Vera Cruz, Mexico.

2. The contract between defendant Mexican Company, and Adam Adams for the erection of a sugar refinery on the premises of said Mexican Company at Pam, Mexico, and the specifications thereto annexed.

3. The letter of Sugar Company of New Jersey addressed to John Boland as President of the Mexican Company and dated on or about November 29, 1902, notifying the Mexican Company

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of the assignment to the Sugar Company of the lease theretofore made by the Mexican Company to Max Murry and John Boland and of the exercise of the option of renewal contained in said lease.)

(Etc., etc., continue as in order.)

Seventh.—That it will be unsafe for the plaintiffs to proceed to the trial of this action without the testimony of said (*Mexican Company*) and its said officers as to the matters hereinabove stated, which comprise almost all the material facts constituting the plaintiffs' cause of action, and without an examination before trial of said defendant and its said officers, in connection with the books, and papers hereinabove specified, because if the plaintiffs should be left until the trial before having an opportunity to examine the defendant and its officers, with production of said books and papers, as to the facts hereinabove set forth they would be seriously crippled in their effort to ascertain the facts at the trial and if the recollection of said officers of said defendants should happen to fail at the trial the plaintiffs by reason of their unfamiliarity with the books and papers of said company would be unable to establish their case. That, as defendant is informed and believes, through frequent dealings with the officers of said corporation, and particularly with the said (*Voss*) continued to the present time, the business of said corporation, other than the management of the actual operation of the plantation in Mexico, is carried on by (said *Jones and Voss in the City of New York*,) and that its books of account, minute book, stock book, and its most important papers are kept in the City of New York, (*the said company not maintaining any regular office for the transaction of business in the State of Louisiana, but merely maintaining a nominal office in the City of New Orleans to comply with the requirements of the law of Louisiana under which it is incorporated.*)

(That the only officer of said corporation in the State of Louisiana is George Glass, the Assistant Secretary of said corporation, who has taken no part whatsoever in the management of said corporation and has no knowledge whatsoever as to the details of its affairs, as deponent is informed and believes, his informant being his correspondent Money Keep, an attorney and counsellor-at-law, of the State of Louisiana, residing at New Orleans, who has at various times in the past, sought information from said

Of Corporation — Affidavit.

Glass, but has always encountered difficulty in locating any office of said corporation in New Orleans or elsewhere in the State of Louisiana, and has not been able to obtain any information whatsoever from said Glass as to the affairs of the corporation.

That the only business of said corporation consists of the operation of the plantation in Mexico. That none of its business relating to said plantation is transacted in New Orleans, but that all the reports and other correspondence relating to the operation of said plantation are addressed by the resident manager on said plantation to said Jones and Voss at the City of New York and that all the affairs of said company are directed by said Jones and Voss at the City of New York, at their respective offices No. 32 Liberty street where they respectively transact business regularly.)

Eighth.—(That on or about the 31st day of January, 1906, said Voss personally informed deponent that he expected to leave for Mexico on Friday, February 2, 1906, and to remain in that country for several months. That deponent is informed by his counsel that this case will be reached for trial in the said month of March, and that according to Voss' statement to deponent it is entirely uncertain whether said Voss will be present at the trial of the issues in this action or within the jurisdiction of the court at that time. That said Voss is the Secretary and Treasurer of said Mexican Company, and more familiar with the matters hereinabove set forth, and with the details of the management of said corporation, and with its books and papers, than said Jones, and that the plaintiffs cannot safely proceed to trial without the testimony of said Voss, as such officer of said Mexican Company, in connection with the books and papers of said company required by the order accompanying this affidavit.)

Ninth.—That no previous application for an order for the examination of said (Mexican Company) and of said (Henry Jones and Frank Voss) as officers and for the production of said books and papers of the (Mexican Company,) has been made.

(JACOB SMITH.)

Sworn to before me, this
(1st) day of (February, 1906.)

(JOSEPH MOORE,)

Notary Public, (No. 2,)

(New York) County.

Vacating Order — Order To Show Cause.

FORM No. 147.

Order to Show Cause Why Order for Examination Should Not be
Vacated.NEW YORK SUPREME COURT,
County of (*New York*).

(GODFREY GOLDEN,)

Plaintiff.

against

(UNITED GALVANIZING COM-
PANY,)

Defendant.

On the annexed affidavit and on the pleadings herein, the order of Mr. Justice (*William J. Kelly*), dated (*January 10, 1906*), for the examination of (*Louis Potter*), as President of the defendant, before trial, and the papers upon which the said order was granted.

LET the plaintiff or his attorneys show cause, at a Special Term of this Court, to be held in (*Part I thereof*), for the hearing of contested motions, at the Court House, in the (*Borough of Manhattan, City of New York*), on the (*18th*) day of (*January, 1906*), at (*10:30*) o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the order bearing date (*January 10, 1906*), for the examination of (*Louis Potter*), as President of the above-named defendant, before trial, should not be vacated and set aside, or, if the said motion be denied, why the order should not be modified so as to restrict and limit the said examination; in the meantime, until the hearing and decision of this motion,

LET all proceedings under the said order for the examination of the said (*Potter*) be stayed, except to adjourn the said examination.

Sufficient reason appearing to me, service of a copy of this order and of the annexed affidavit on or before the (*16th*) day of (*January, 1906*), will be sufficient notice of this motion.

Dated, (*New York, January 15, 1906*).

(H. A. GILDERSLEEVE),

Justice of the Supreme Court
of the State of New York.

Vacating Order — Affidavit.

FORM No. 148.

Affidavit to Obtain Order to Show Cause.

NEW YORK SUPREME COURT,
County of (*New York*).

(<i>GODFREY GOLDEN</i> ,)	}
Plaintiff,	
against	
(<i>UNITED GALVANIZING COM- PANY</i> ,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*MORTIMER FISHER*), being duly sworn, deposes and says:

I am the attorney for the defendant herein. This action was commenced on or about the (*14th*) day of (*April*, 1904), issue was joined (*April* 30, 1904), and the issues are upon the general Trial Term Calendar for trial.

That the cause appeared upon the call calendar for (*Friday*, *January* 12, 1906), and defendant requested that the case be set down for trial, but plaintiff objected thereto, and, on his motion, the case was set over to the (*March*) call.

That on the (*11th*) day of (*January*, 1906), after the case had appeared upon the call calendar to be set down for trial, the President of the defendant corporation was served with an order signed by Mr. Justice (*William J. Kelly*) directing that he be examined, pursuant to section 873 of the Code of Civil Procedure, and that upon said examination he produce the order books, contract books, ledgers, bank books and check books of the defendant corporation, and any other books or papers containing entries of the matters involved in this action, as more fully appears from the said order, to which reference is hereby made.

That this action is brought to recover the sum of (*eighteen hundred*) dollars, alleged commissions claimed to be due to plaintiff's assignors — the plaintiff being a clerk in the office of plaintiff's attorneys — which said commissions are claimed to have been

Vacating Order — Affidavit.

earned by reason of the alleged sale of a certain galvanizing plant and license through the alleged efforts of plaintiff's assignors.

That with the commencement of the action a warrant of attachment was applied for and secured by the plaintiff, and in his affidavit, upon which the warrant was granted, plaintiff alleged that he is entitled to recover from the defendants the said sum of (*eighteen hundred*) dollars and interest, over and above all counter-claims known to plaintiff. The defendant, to secure a discharge of the attachment, gave the bond required by the Code of Civil Procedure.

That the said order for the examination of the defendant's President is claimed to be material and necessary, in order to establish the actual making of the several sales alleged in the complaint and the exact terms thereof. That the sales claimed in the complaint are but three sales, each one of which is made the basis of a distinct cause of action.

[*Here insert facts on which motion to vacate is based.*]

I verily believe that this examination at this late day, when the case is upon the call calendar, is not made in good faith, but for the purpose of ascertaining just what the defendant's case will be at the trial, and to ascertain what the defendant's officers will testify to.

That the time for holding the next Trial Term where the action is triable is the first Monday of (*February, 1906,*) and that the present Trial Term now in session commenced the first (*Tuesday of January, 1906*).

That as the order for the examination of the said (*Potter*) is returnable (*January 17*), an order to show cause, returnable in less than five days, is necessary, so that this motion may be heard and disposed of before said order for the examination of said (*Potter*) is made returnable.

No previous application for the order now asked for has been made to this or any other court or judge.

(*MORTIMER FISHER.*)

Sworn to before me, this }
(*13th*) day of (*January, 1906*). }

(*M. V. CONNELLY*),
Commissioner of Deeds,
City of (*New York*).

FORM No. 149.

Examination of Witness Before Trial — Affidavit to Obtain.

NEW YORK SUPREME COURT,
(*Saratoga*) County.

(<i>SAMUEL OSMOND</i> ,)	}
Plaintiff,	
against	
(<i>ARTHUR FARBER</i> ,)	
Defendant.	}

STATE OF NEW YORK, }
County of (*Saratoga*), } ss.:

(*WINTHROP FRYE*), being duly sworn, says that he is one of the attorneys for the plaintiff in the above-entitled action and resides and has his place of business at (*Saratoga Springs, New York*).

That the defendant resides in the (*town of Schuylerville*) in said county, and has his place of business at (*170 Broadway, Borough of Manhattan, City of New York*), as deponent is informed and verily believes.

That this action was commenced by the service of a copy of the summons and complaint upon the defendant (*Arthur Farber*) at his said place of residence on the (*8th*) day of (*September, 1904*), as appears by the affidavit of service hereto attached. That the defendant has appeared and answered by (*Niles & Niles*), whose office and post-office address is (*17 Wall street, Borough of Manhattan, New York City*).

That this action is brought to recover the sum of (*one thousand*) dollars (\$1,000) for (*professional services performed by William Wallace, the plaintiff's assignor, as a physician and surgeon and for medical service and attendance and furnishing medicines, etc.*) to the defendant (*and members of his family*) at the (*city of Genoa, Italy*), at the special request of the defendant, as appears by the complaint, a copy of which is hereto annexed and marked "A."

That the answer of the defendant was served on (*September 29th, 1904*), and is in substance a general denial.

Of Witness — Affidavit.

That, as deponent is informed and believes, (*William Wallace*) is a physician and surgeon residing and practicing his profession in the (*City of Genoa, Italy*); that deponent has learned from said (*Wallace*), through interviews and by correspondence with him, the facts which he expects to prove by (*Miss Mary Rowen*), who resides, as deponent is informed and believes, at (*Hotel Martha Washington, 30 East 30th street, borough of Manhattan, New York City*). That plaintiff expects and desires to prove by said (*Mary Rowen*) that (*Eleanor Farber, a daughter of the defendant, was seriously ill and confined to her bed and was continuously under the plaintiff's care in the City of Genoa, Italy, for a period of two months, namely, from June to September, 1903, and that during said period said William Wallace attended said Eleanor Farber upwards of sixty times and furnished to her medicines and medical treatment*); and plaintiff further expects and desires to prove by said (*Mary Rowen*) that during said times she was (*the tutor and traveling companion to said Eleanor Farber and had the care and charge of her during said illness, and she was employed by the defendant as such tutor and traveling companion for his said daughter Eleanor*).

Deponent further says that the testimony of said witness (*Mary Rowen*) is absolutely necessary and material for the plaintiff upon the prosecution of this action, and that without such testimony the plaintiff cannot safely proceed to trial for the reason that (*said Mary Rowen was at said times in the employ of the defendants and acting as tutor and traveling companion of defendant's said daughter, and as such procured the attendance and services of plaintiff for defendant's said daughter*) and that said (*Mary Rowen was during all said times present with and assumed charge of said daughter's care during her illness*) as alleged in the complaint.

That said (*Mary Rowen*), the said witness, is and for several months has been in feeble health, as deponent is informed and believes, and intends to sail for Europe on the (*7th*) day of (*March, 1905*), and will not return to the United States in time to attend the trial of this action, as deponent has been informed by a letter from said (*Mary Rowen*), which is hereto annexed and made a part of this affidavit, and verily believes.

That unless the said witness be examined conditionally and her testimony taken *de bene esse* before she leaves this country, to wit: on the (*7th*) day of (*March, 1905*), the plaintiff will lose the benefit of her testimony.

Of Witness — Order Of Reference.

That it is the intention and purpose of the plaintiff to examine said (*Mary Rowen*) as a witness and to use her deposition as evidence upon the trial of this action.

That no previous application for this or any similar order has been made by or on behalf of the plaintiff.

(*WINTHROP FRYE.*)

Sworn to before me, this }
(2nd) day of (*March*, 1905). }

(*CHARLES LOCKWOOD*),
Notary Public,
(*Saratoga*) County.

FORM No. 150.

Examination of Witness Before Trial — Order of Reference.

NEW YORK SUPREME COURT,
(*Saratoga*) County.

(<i>SAMUEL OSMOND</i>),	}
Plaintiff,	
against	
(<i>ARTHUR FARBER</i>),	
Defendant.	

On reading and filing the affidavit of (*Winthrop Frye*), verified the (2nd) day of (*March*, 1905), hereto annexed, and the pleadings herein and

On motion of Messrs. (*Frye & Bennett*), attorneys for (*plaintiff*),

ORDERED that (*Charles G. Moody*), of (*Saratoga Springs, New York*), a counsellor at law, be and he hereby is appointed Referee herein to take the deposition of (*Mary Rowen*), as a witness for the (*plaintiff*), conditionally in this action.

And it is further ordered that the (*plaintiff*) cause the examination of said witness to be brought on before said Referee at (*Hotel Martha Washington, No. 30 East 30th street, Borough of Manhattan, City of New York*), on the (6th) day of (*March*, 1905),

Of Witness — Order.

at noon, and that the (*plaintiff*) give the attorneys for the (*defendant*) notice of the time and place of such examination (*by mail*) at least (*three*) days before the same, which notice shall be deemed sufficient.

Dated, (*March 2, 1905*).

(*ROGER NASH*),
Justice of the Supreme Court.

FORM No. 151.

Order for Examination of Witness Before Trial.

NEW YORK SUPREME COURT,
(*Saratoga*) County.

(*SAMUEL OSMOND*),

Plaintiff,

against

(*ARTHUR FARBER*),

Defendant.

On the annexed affidavit of (*Winthrop Frye*), one of the attorneys for the plaintiff in the above entitled action, verified (*March 2, 1905*),

ORDERED that (*Mary Rowen*) of (*the Borough of Manhattan, City of New York*), be examined before (*Charles G. Moody*), an attorney at law, the Referee appointed herein for that purpose, as a witness in the above entitled action, conditionally, at (*the Hotel Martha Washington, No. 30 East 30th street, Borough of Manhattan, New York City*), on the (*6th*) of (*March, 1905*), at noon, and that Messrs. (*Niles & Niles*), the attorneys for the defendant herein, be given notice of such examination by service upon them (*by mail*) of a copy of this order and affidavit on or before the (*3rd*) day of (*March, 1905*).

Dated (*March 2, 1905*).

(*ROGER NASH*),
Justice of the Supreme Court.

FORM No. 152.**Examination of Witness Before Trial — Notice of Examination.**

Sirs:

YOU WILL PLEASE TAKE NOTICE of the orders made herein by Hon. (*Roger Nash, County*) Judge of the (*County of Saratoga*), dated (*March 2, 1905*), of which the foregoing are copies; and that pursuant thereto the (*plaintiff*) will take the deposition of (*Mary Rowen*) as a witness, as therein provided on the (*6th*) day of (*March, 1905*), at (*noon*), at (*the Hotel Martha Washington, No. 30 East 30th street, Borough of Manhattan, New York City*).

Dated (*New York, March 3, 1905*).

Yours, etc.,

(FRYE & BENNETT),

Attorneys for (*Plaintiff*).

To

Messrs. (*NILES & NILES*),Attorneys for (*Defendant*).

DISCOVERY AND INSPECTION.

NOTE.

Examination before trial, under §§ 870-880, Code of Civil Procedure, and proceedings for Inspection and Discovery of a book, document or other paper, under §§ 803-809, Code of Civil Procedure, cannot be had in one and the same proceeding.

Discovery can be had only of a book, document or other paper. The court rules provide for discovery of "personal property" as well, but it seems the adoption of this rule was beyond the power of the court.

See on this point, 66 *App. Div.* 203.

FORM No. 153.

Discovery of Books and Papers — Petition.

NEW YORK SUPREME COURT,
(*New York*) County.

(JOHN LITTLE,)	}
Plaintiff,	
vs.	
(PUMP CONSTRUCTION COM- PANY,)	
Defendants.	

To the Supreme Court of the State of New York:

The petition of (*John Little*), the plaintiff above named, respectfully shows to this court as follows:

I. That he is the plaintiff in this action and resides at (*No. 25 West 60th street, in the Borough of Manhattan, City of New York*).

II. That this action was commenced by the service of a summons and complaint on the defendant herein on the (*19th*) day of (*February, 1907*), and issue was joined herein on the (*16th*) day of (*March, 1907*), by the service of an answer that the defendant appeared herein on (*March 16th, 1907*), by his attorney (*Oliver Hodge*), whose office and post office address is (*No. 32 Wall street, Borough of Manhattan, City of New York*).

Petition.

III. That this case is at issue and on the general calendar of this court, and that the place of trial of this action is the county of (*New York*).

IV. That the defendant is, and at all the times hereinafter mentioned, was a domestic business stock corporation engaged in the business of manufacturing of pumps and accessories, and has its principal place of business at (*No. 220 Broadway in said Borough*).

V. That this action is brought, as more fully appears by the complaint herein, a copy of which is hereto annexed and made a part hereof, to recover the sum of (\$14,000 *as commission due to plaintiff upon a contract made by the defendant with petitioner whereby he was employed to represent defendant as its general sales agent to sell the pumps and accessories manufactured by the defendant, and to secure contracts for the installation and repairs of said pumps and pumping plants, and by the terms of said contract plaintiff was to receive 10 per cent. of the amount of all sales and contracts secured for the defendant by the plaintiff during the years 1902 to 1907*). That the complaint alleges that (*during said term of his employment, the plaintiff made a large number of sales of pumps and accessories and secured for the defendant a large number of contracts for the installation and repair of pumping plants manufactured by the defendant, and has never been paid the commission due thereon under the terms of said contract*).

VI. That after a full and fair statement of the facts of this case to (*Oliver Hodge*), his counsel herein, petitioner is advised by his said counsel that an inspection and discovery of the following books, papers, documents and accounts is necessary to petitioner to establish his cause of action upon the trial of this cause, to wit: (*all the ledgers, sales books, contract registers, material books, invoice and delivery books, accounts in said books showing the contracts made by the defendant with a large number of persons and corporations, secured through the efforts of petitioner, together with the dates thereof, the amounts received and still receivable thereunder*) ; and also all (*contracts in writing made by defendants with said persons and corporation during the period of petitioner's employment, viz.: from January 1, 1902, to January 1, 1907*). That such inspection and discovery is necessary and material to petitioner to show (*the facts, items, amounts in-*

Petition.

involved, and number of contracts secured, and sales made through the efforts of petitioner upon which commission is claimed under the contract) set forth in the complaint, and said facts (*items and amounts*) can be proved only by a discovery and inspection of the books, papers and accounts above described.

That all of said books, papers, documents and accounts were, during the whole period herein mentioned, kept in the sole control of the defendant and their servants and agents, and are now and ever have been in the exclusive possession, custody and control of the said defendant herein, and that no copies of said papers, books, documents or accounts exist.

That your petitioner has made diligent effort to obtain the foregoing information of said items, facts, amounts, but has been unable to discover any person who possesses such knowledge or information, and that your petitioner has no available proof outside the said books, documents, papers and accounts, of the amount of the indebtedness of the defendant to him.

That neither of said books, documents, papers or accounts nor any copy thereof is now or ever has been in the possession or under the control of your petitioner.

That your petitioner, through (*Oliver Hodge*), his attorney, has requested and demanded of defendant permission to inspect said books, documents, papers and accounts, which request has been denied as appears more fully by the affidavit of (*Oliver Hodge*), verified (*July 10, 1907*), hereto annexed and made a part hereof.

That no previous application for an order of Inspection and Discovery has been asked for herein.

Wherefore your petitioner prays that an order may be granted directing the defendant herein, (*The Pump Construction Company*), to produce and discover and to allow to the plaintiff an inspection and copy, or permission to take a copy of (*such portions of all ledgers, sales books, material books, invoice and delivery books, contract registers, accounts receivable and all other accounts as bear upon the transactions involved in this action*), papers, books, contracts and documents possessed by or under the control of the defendant which will show the transactions above described between (*January 1, 1902, and January 1907*).

And in default thereof to show cause on the (*18th*) day of (*July, 1907*) at (*10:30*) o'clock in (*fore*)noon, at Special Term, (*Part I*), of this Court to be held at the County Court House in the (*Borough of Manhattan, City of New York*), why the prayer

Order.

of the petition should not be granted; and that all proceedings on the part of the defendant be stayed until the hearing and determination of this application.

(*JOHN LITTLE.*)

Dated (*New York, July 10, 1907*).

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JOHN LITTLE*), being duly sworn, says that he is the petitioner herein named; that he has read the foregoing petition and knows the contents thereof; that the same is true to deponent's knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

(*JOHN LITTLE.*)

Sworn to before me, this }
(10th) day of (*July, 1907*). }

(*HENRY BENNETT*),
Notary Public,
(*New York*) County.

FORM No. 154.

Order for Discovery of Books and Papers.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JOHN LITTLE,</i>)	}
Plaintiff,	
against	
(<i>THE PUMP CONSTRUCTION COMPANY,</i>)	
Defendant.	}

Upon reading and filing the annexed petition of (*John Little*), the plaintiff herein, verified the (10th) day of (*July, 1907*), with the annexed copies of the pleadings and the annexed affidavit of (*Oliver Hodge*), verified the same day,

Order.

NOW, on motion of (*Oliver Hodge*), attorney for the plaintiff, IT IS ORDERED that the defendant herein, (*The Pump Construction Company*), be and it is hereby directed to produce and discover and to allow to the plaintiff an inspection and copy, or permission to take a copy of (*such portion of all ledgers, sales books, material books, invoice and delivery books, contract registers, accounts receivable and all other accounts, papers, books, contracts and documents*) possessed by or under the control of the defendant as will show all transactions involved in this action between (*January 1, 1902, and January 1, 1907*).

Or in default thereof to show cause on the (*18th*) day of (*July, 1907*) at (*10:30*) o'clock in the (*fore*)noon, at Special Term, (*Part I*) of this Court, to be held at the County Court House in the (*Borough of Manhattan, City of New York*), why the prayer of said petition should not be granted;

And it is further ordered that all proceedings on the part of the defendant be and hereby are stayed until the hearing and determination of this application.

Dated, (*New York, July 10th, 1907*).

(*VICTOR J. DOWLING*),

(Justice of the Supreme Court).

PHYSICAL EXAMINATION BEFORE TRIAL.

FORM No. 155.

Physical Examination Before Trial — Order.

NEW YORK SUPREME COURT,
(Kings) County.

(*PETER FURMAN*,) an infant by
(*Murray Furman*, his Guardian ad
litem,)

Plaintiff,

against

(*METROPOLITAN RAILWAY
COMPANY*,)

Defendant.

Upon the pleadings and proceedings had herein, and upon the annexed affidavit of (*Daniel Boone*), verified the (29th) day of (*September*, 1904), and it appearing to me that proper cause has been shown for an oral and physical examination of the plaintiff herein, as an adverse party before trial,

NOW, on motion of (*James Larrabee*), Esq., attorney for the defendant, it is

ORDERED that on the (5th) day of (*October*, 1904), at (10) o'clock in the (fore)noon of that day (*Peter Furman*), of (161 *East Eleventh street, Borough of Manhattan, City of New York*,) the plaintiff in this action, appear before (*Bradford Forester*), who is hereby appointed referee for the purpose, at (160 *Broadway, Borough of Brooklyn*), the office of the said referee, and that the plaintiff then and there be examined by the defendant herein as an adverse party before trial with reference to the manner, nature, location, extent and effect of the injuries alleged in the complaint herein to have been caused by the defendant, its agents, servants or employees. And it is

FURTHER ORDERED that the said plaintiff appear before the said referee at the time and place mentioned above, and that he then and there submit in the presence of such referee and physician duly named and counsel for the respective parties herein to an oral examination with reference to the nature, extent and location and effect of the injuries alleged in the complaint herein

Order.

to be made by (*Bradford Forester*), who is hereby appointed by the Court for the purpose of taking such oral examination, and in which oral examination counsel for the respective parties may participate. And it is

FURTHER ORDERED that subsequent to such oral examination by the said (*Bradford Forester*) and the aforesaid counsel, the plaintiff herein shall submit to an examination of his person to be made by the said (*Roland Rowe*), M. D., with reference to his physical condition, and with respect to the location, extent and effect of the injuries alleged in the complaint to have been caused by the negligence of the defendant, its servants, agents or employees. Said physician, after making such examination of the person of the plaintiff shall report all findings of such examination in writing to the said referee herein, and shall submit to an oral examination by the counsel for the respective parties with reference thereto, and the said referee shall then and there certify the testimony of the plaintiff, for the taking of which provision is hereby made, and the testimony and findings of the said (*Roland Rowe*), M. D., to this Court. And it is

FURTHER ORDERED that the plaintiff and his attorney be and they hereby are stayed from taking any further proceedings in this action except to review or vacate this order until the filing in this Court of the report of the referee aforesaid.

It appearing that the reason that the defendant asks that this examination be held on the (5th) day of (*October*, 1904), and the service of a copy of this order upon the plaintiff or his attorney be made on or before 6 o'clock P. M. on the (30th) day of (*September*, 1904), which is less than the five days' notice required to be given by section 873 of the Code of Civil Procedure, is that the case is now on the calendar of this Court, and a motion for a preference herein and to designate a day certain during the October Term upon which said case may be heard has been made in this case, and said case may be reached for trial before five days' notice required by said section of the Code shall have expired, and

Sufficient reason therefor appearing, let service of a copy of this order upon the plaintiff and his attorney on or before 6 o'clock P. M. on the (30th) day of (*September*, 1904), be sufficient.

Dated, (*Brooklyn, September 29th*, 1904).

(*WILLIAM D. DICKEY*),

Affidavit.

FORM No. 156.

Physical Examination Before Trial — Affidavit to Obtain.

NEW YORK SUPREME COURT,

(Kings) County.

(PETER FURMAN,) an infant by
(Murray Furman, his Guardian ad
litem,)

Plaintiff,

against

(METROPOLITAN RAILWAY
COMPANY,)

Defendant.

STATE OF NEW YORK, }
County of (New York), } ss.:

(DANIEL BOONE), being duly sworn, deposes and says:

That he is Vice-President and an officer of the (*Metropolitan Railway Company*), the corporation defendant in the above-entitled action; that the statements made in this affidavit are made upon information and belief, except where hereinafter expressly stated to be made upon deponent's own knowledge; that the sources of deponent's information and the grounds of his belief are books of record kept in the office of said corporation defendant, which books deponent believes to be correct; also reports made to deponent by officers, servants and employees of said corporation defendant with reference to this action, which reports deponent believes to be true.

That this action is brought to recover the sum of (*five thousand*) (\$5,000) dollars damages for physical injuries and consequential damages alleged to have been sustained by the plaintiff through the carelessness and negligence of the defendant, its agents, servants or employees on or about the (4th) day of (*August, 1904*), at (*or near the intersection of Broadway and 14th street, Borough of Manhattan, City of New York*), as shown by the complaint herein.

That this action was commenced by the service of a summons and complaint on the (12th) day of (*August, 1904*), upon which

Affidavit.

day the defendant duly served its notice of appearance, and that thereafter on the (1st) day of (*September, 1904*), issue was joined herein by due service of defendant's answer, which answer is substantially a general denial of all the material allegations contained in the complain.

The plaintiff herein, (*Peter Furman*), resides at (*No. 161 East Eleventh*) street, (*Borough of Manhattan, City of New York*), and appeared in this action by (*Martin T. Manton*), Esq., attorney and counsellor at law, with offices at No. (*375 Fulton*) street, (*Borough of Brooklyn, City of New York*), and the defendant, (*Metropolitan Railway Company*), having its offices and principal place of business at No. (*62 Broadway, in the Borough of Manhattan, New York City*), appeared herein by (*James Larrabee*), Esq., attorney and counsellor at law, who has an office at No. (*21 Park Row, Borough of Manhattan, City of New York*.) There has been no change of parties or attorneys herein.

That no physical examination of this plaintiff has been had in the interest of the defendant, although the defendant has requested from (*Martin T. Manton*), Esq., the attorney for the plaintiff herein, a physical examination of the plaintiff, and said counsel has refused to allow the plaintiff to consent to submit to such physical examination. That the defendant has no information and cannot obtain any information in regard to the plaintiff's physical condition, nor of the nature, extent or effect of the injuries alleged to have been sustained by the plaintiff, and only by an oral and physical examination, as provided by the Code of Civil Procedure can this defendant obtain sufficient information concerning the nature of the injuries sustained by the plaintiff, to enable the defendant to properly meet upon the trial of this action the allegations contained in the complaint.

That the defendant herein intends in good faith to defend this action. That it is absolutely necessary for the defendant to have such physical examination and to have such testimony as it seeks through the order herein asked for, in order that it may learn the nature, extent and effect of the injuries alleged in the complaint to have been sustained by the plaintiff. That this testimony may be used at the trial, and that it is necessary to obtain this information now rather than at the trial, so that the defendant may know what the injuries are and be able to properly defend this action at the time of the trial. The defendant submits that the

Affidavit.

plaintiff is in a position to have knowledge as to the physical injuries alleged to have been sustained and which it is now necessary for the defendant to know in order that the defendant may safely proceed with the defense of this action. And the defendant having, through its officers, agents and employees, diligently endeavored to obtain this information, and being utterly unable to obtain any definite information with regard thereto, now seeks a physical examination of the plaintiff herein, in order to obtain a statement of the injuries and expert testimony as to the nature, extent and effect.

That the reasons why the defendant asks this examination be held on the (3rd) day of (*October*, 1904), and that service of a copy of this order upon the plaintiff and his attorney be made on or before 6 o'clock P. M. on the (30th) day of (*September*, 1904), which is less than five days' notice required to be given by section 873 of the Code of Civil Procedure, is that the case is now on the calendar of this Court and a motion for preference and to designate a day certain during the (*October*) Term for the trial of this case has been made and said case may be reached for trial before the usual five days' notice as required by section 873 of the Code of Civil Procedure shall have elapsed.

That no previous application for the relief herein sought has been made to any court or judge.

WHEREFORE your deponent asks that an order be granted requiring the plaintiff herein to appear before a referee and then and there submit to an oral and physical examination in accordance with the provisions of the order hereto annexed, and further requiring that the plaintiff and his attorney be stayed from taking any and all proceedings in this action until the confirmation by this Court of the report of the referee herein.

(DANIEL BOONE.)

Sworn to before me, this }
(29th) day of (*September*, 1904). }

(HENRY J. TURNER),
Notary Public,
(*New York*) County.

**NOTICE OF TRIAL: SUBSTITUTION OF ATTORNEYS:
REVIVAL OF ACTION: DISCONTINUANCE.**

NOTE.—Bear in mind that by L. 1907, chap. 526 (in effect September 1, 1907), a new section has been added to the Code of Civil Procedure as follows:

“§ 973. The court in its discretion, may order one or more issues to be separately tried prior to any trial of the other issues in the case.”

FORM No. 157.

Plaintiff's Notice of Trial — Trial Term.

NEW YORK SUPREME COURT,
County of (*New York*).

(*JOHN JONES*),

Plaintiff,

against

(*JOHN DOE*),

Defendant.

PLEASE TAKE NOTICE, that the issues of fact in this action will be brought to trial and an inquest taken therein, at a Trial Term of this court appointed to be held in and for the County of (*New York*) at the County Court House, in the (*Borough of Manhattan, City of New York*), on the (*first Mon*)-day of (*June, 1904*), at 10:30 o'clock in the forenoon of that day.

Dated, the (*13th*) day of (*May, 1904*).

(*WILLIAM REILLY*),

Attorney for Plaintiff,

(*No. 27 Pine Street*),

(*Borough of Manhattan*),

(*City of New York*).

To

(*EZRA WILLIAMS*), Esq.,

Attorney for Defendant,

(*No. 15 William Street*),

(*New York City*).

 Defendant, Trial Term.

FORM No. 158.**Defendant's Notice of Trial — Trial Term.**

NEW YORK SUPREME COURT,
County of (New York).

(JOHN JONES,)	}
Plaintiff,	
against	
(JOHN DOE,)	
Defendant.	

PLEASE TAKE NOTICE, that the issues of fact in this action will be brought to trial and a motion made to dismiss the complaint at a Trial Term of this court appointed to be held in and for the County of (New York), at the County Court House in the (Borough of Manhattan, City of New York,) on the (first Monday) of (June, 1904), at 10:30 o'clock in the forenoon of that day.

Dated, the (13th) day of (May, 1904).

Yours, etc.,
(EZRA WILLIAMS),
Attorney for Defendant,
(No. 15 William Street),
(Borough of Manhattan),
(City of New York).

To

(WILLIAM REILLY), Esq.,
Attorney for Plaintiff,
(No. 27 Pine Street),
(New York City).

Plaintiff, Trial Term.

FORM No. 159.

Plaintiff's Notice of Trial — Special Term.

NEW YORK SUPREME COURT,
County of (*New York*).

(<i>JOHN JONES</i> ,)	}
Plaintiff,	
against	
(<i>JOHN DOE</i> ,)	
Defendant.	

PLEASE TO TAKE NOTICE, that the issues of fact and law in this action will be brought to trial and an inquest taken therein at a Special Term of this court appointed to be held in and for the County of New York, at the County Court House in said city on the (*first Monday*) of (*May*) next, at 10:30 o'clock, in the forenoon of the same day.

Dated, the (*13th*) day of (*April*, 1904).

Yours, etc.,

(*WILLIAM REILLY*),
Attorney for Plaintiff,
(*No. 27 Pine Street*),
(*Borough of Manhattan*),
(*City of New York*).

To

(*EZRA WILLIAMS*), Esq.,
Attorney for Defendant,
(*No. 15 William Street*),
(*New York City*).

 Defendant, Special Term.

FORM No. 160.**Defendant's Notice of Trial — Special Term.**

NEW YORK SUPREME COURT,
County of (*New York*).

(JOHN JONES,)	}	
		Plaintiff,
against		
(JOHN DOE,)		Defendant.

PLEASE TAKE NOTICE, that the issues of fact and law in this action will be brought to trial and a motion made to dismiss the complaint at a Special Term of this court appointed to be held in and for the County of (*New York*), at the County Court House, in the (*Borough of Manhattan, City of New York*), on the (*first Monday*) of (*May, 1904*), at 10:30 o'clock in the forenoon of that day.

Dated, the (*13th*) day of (*April, 1904*).

Yours, etc.,

(EZRA WILLIAMS),
Attorney for Defendant,
(*No. 15 William Street*),
(*Borough of Manhattan*),
(*City of New York*).

To

(WILLIAM REILLY), Esq.,
Attorney for Plaintiff,
(*No. 27 Pine Street*),
(*New York City*).

Order On Consent.

FORM No. 161.

Order Reviving Action — Entered on Consent.

At a Special Term (*Part I*) of the Supreme Court, held in and for the County of (*New York*), at the County Court House in (*the Borough of Manhattan*), in said county, on (*7th*) day of (*February*, 1907).

PRESENT:

Hon. (*LEONARD A. GIEGRICH*),
Justice.

(<i>WILLIAM HILDEBRAND</i>), Plaintiff, against (<i>HARRIET ENGEL</i>), Defendant.	}
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On reading and filing the affidavits of (*Arthur Kenney*) and (*Marian Hildebrand*) showing the death of (*William Hildebrand*), the plaintiff in the above entitled action and the granting of letters testamentary pursuant to and by virtue of his last will and testament to (*Margaret Hildebrand*) and (*William Kenney*) by the Surrogate of (*New York*) County, and on motion of (*Thaddeus Browne*), attorney for said (*Margaret Hildebrand*) and (*William Kenney*), the attorney for the defendant herein consenting thereto:

ORDERED, that this action be and the same hereby is continued in the name of said (*Margaret Hildebrand*) and (*William Kenney*) executors of the last will and testament of the said (*William Hildebrand*), deceased, and

ORDERED, that such continuance and substitution be without prejudice to any proceedings heretofore undertaken in this action.

Enter,

(*L. A. G.*)

J. S. C.

I hereby consent to the entry of the above order and the substitution therein made.

(*HENRY HALFF*),
Attorney for (*Defendant*).

Dated (*New York, February 5, 1907.*)

Notice Of Motion.

FORM No. 162.

Notice of Motion for Substitution of Party Plaintiff and Continuance
of Action.SUPREME COURT,
(*New York*) County.

(<i>WILLIAM HARRIS,</i>)	}
Plaintiff,	
against	
(<i>PHILIP MOON,</i>)	
Defendant.	

Sir:

TAKE NOTICE that upon the affidavit of (*Oliver Harris*), hereto annexed, and upon the pleadings in this action and upon the proceedings therein the undersigned will move this court at a Special Term, (*Part I*) thereof, to be held at the County Court House, in the County of (*New York*), on the (*7th*) day of (*March*, 1907), at 10:30 o'clock in the forenoon or as soon thereafter as counsel can be heard for an order directing the substitution of (*Oliver Harris*), as executor of (*William Harris*), deceased, plaintiff herein, in the place of said deceased plaintiff, the continuance of this action in the name of said (*Oliver Harris*), as executor of (*William Harris*), deceased, as plaintiff herein; that such substitution and continuance be without prejudice to any proceedings heretofore undertaken in this action and for such other and further relief as may appear just.

Dated (*February* 25, 1907).

(*MILTON J. SAVAGE*),
Attorney for (*Oliver Harris*),
Executor of (*William Harris*), Deceased,
(*27 William street,*
Borough of Manhattan,
City of New York).

To

(*THOMAS MULRY*), Esq.,
Attorney for (*Defendant*),
(*141 Broadway,*
Borough of Manhattan,
City of New York).

Affidavit.

FORM No. 163.

Affidavit on Motion for Substitution of Party Plaintiff and Continuance of Action.

SUPREME COURT, (*New York*) County.

(WILLIAM HARRIS,)

Plaintiff,

against

(PHILIP MOON,)

Defendant.

County and }
State of New York, } ss.:

(Oliver Harris), being duly sworn, says:

I. That he is the executor under the last will and testament of (*William Harris*), plaintiff in this action, now deceased,II. That this action was commenced by the service of a summons and complaint upon defendant herein on or about the (10th) day of (*November*, 1906), to foreclose a mortgage upon the property of (*Philip Moon*,) the defendant, consisting of real property in the (*City and*) County of (*New York*,)III. That on or about the (30th) day of (*November*, 1906,) issue was joined herein by the service of an answer, and thereafter, on or about the (16th) day of (*December*, 1906) this cause was duly noticed for trial by plaintiff and duly placed upon the calendar of this court and is still pending, and that the next term at which it could be tried is to be held on the (1st) day of (*April*) next;IV. That thereafter, on or about the (18th) day of (*December*, 1906), as deponent is informed and believes, said plaintiff, being then the sole plaintiff herein, died, leaving a will, by which he appointed deponent, residing in (*New York*) County, his executor. That said will was admitted to probate on or about the (18th) day of (*January*, 1907), by the Surrogate of the County of (*New York*), and that letters testamentary thereon have been issued to said executor by said Surrogate, and he has undertaken the execution thereof, and now is such executor.Sworn to before me, this } (OLIVER HARRIS.)
(24th) day of (*February*, 1907). }
(WILLIAM J. KUNZ),Notary Public, (*New York*) Co.

Order.

FORM No. 164.

Order of Substitution of Party Plaintiff and Continuance of Action.

At a Special Term (*Part I*) of the Supreme Court,
held in and for the County of (*New York*), at
the County Court House in the (*Borough of*
Manhattan) in said county, on the (*25th*) day
of (*February*, 1907.).

PRESENT:

Hon. (*JOHN FORD*),
Justice.

(<i>WILLIAM HARRIS</i>),	}
Plaintiff,	
against	
(<i>PHILIP MOON</i>),	
Defendant.	

On reading and filing the notice of motion of (*Oliver Harris*), as executor of (*William Harris*), deceased, plaintiff herein, dated the (*25th*) day of (*February*, 1907,) and the affidavit of (*Oliver Harris*), verified the (*24th*) day of (*February*, 1907) and upon the pleadings in this action; and upon hearing (*Milton J. Savage*), attorney for said (*Oliver Harris*), as executor in support of said motion, and (*Thomas Mulry*), Esq., attorney for the defendant in opposition thereto

NOW, on motion of (*Milton J. Savage*), Esq., attorney for (*Oliver Harris*), executor of deceased plaintiff,

ORDERED, that said motion be, and the same hereby is granted, and that (*Oliver Harris*), as executor of the last will and testament of (*William Harris*), deceased plaintiff herein be substituted in the place of said (*William Harris*), that this action be, and the same is hereby continued in the name of said (*Oliver Harris*), as executor of the last will and testament of (*William Harris*), deceased; and that such substitution and continuance be without prejudice to any proceedings heretofore undertaken in this action.

Enter,
(*J. F.*),
J. S. C.

Order To Show Cause.

FORM No. 165.

Application for Order of Substitution of Party Plaintiff and Continuance of Action — Order to Show Cause.

SUPREME COURT,
(*New York*) County.

(<i>WILLIAM HILDEBRAND,</i>)	}
Plaintiff,	
against	
(<i>HARRIET ENGEL,</i>)	
Defendant.	}

Upon the annexed affidavit of (*William Kenney,*) verified on the (4th) day of (*February,* 1907,) and on the pleadings herein.

LET (*Harriet Engel,*) defendant herein, or her attorney, show cause before one of the justices of this court, at a Special Term (*Part I*) thereof, to be held in the County Court House in the (*City and*) County of (*New York, Borough of Manhattan,*) on the (12th) day of (*February,* 1907,) at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard why an order should not be granted herein directing the substitution of (*Margaret Hilderbrand*) and (*William Kenney*) as the executors as aforesaid, in the place of said deceased plaintiff, and continuing the action without prejudice to the proceedings already had, and why such other and further relief should not be granted as may be just.

Service of this order shall be sufficient if made upon said (*Harriet Engel,*) or her attorney, on or before the (10th) day or (*February,* 1907.)

(*LEONARD A. GIEGERICH,*)

(*New York, February 4, 1907.*)

J. S. C.

Affidavit.

Affidavit on Motion to Revive Action.

(*WILLIAM HILDEBRAND,*)
Plaintiff,
against
(*HARRIET ENGEL,*)
Defendant.

(*William Kenney*,) being duly sworn, says:

II. That this action was commenced by the service of a summons and complaint upon defendant herein, on or about the (4th) day of (October, 1906,) to foreclose a mortgage upon the property of the defendant (*Harriet Engel*), consisting of real property in the (city and) county of (*New York*.)

III. That on or about the (21st) day of (*October*, 1906,) issue was joined herein by the service of an answer; and thereafter on or about the (3^d) day of (*November*, 1906,) this cause was duly noticed for trial by plaintiff and duly placed upon the calendar of this court and is still pending, and that the next term at which it could be tried is to be held on the (1st) day of (*March*) next,

IV. That thereafter, on or about the (14th) day of (November, 1906,) as deponent is informed and believes, said plaintiff, being then the sole plaintiff herein, died, leaving a will, by which he appointed (*Margaret Hildebrand*) and (*William Kenney*), his executors (*both residing in New York County*). That said will was admitted to probate on or about the (18th) day of (*December, 1906*), by the surrogate of the county of (*New York*), and that letters testamentary thereon have been issued to said executors by said surrogate, and they have undertaken the execution thereof, and now are such executors.

Order.

V. That it is now desired to amend the summons, complaint and notice of pendency of this action, and all the papers herein, by substituting the above-named (*Margaret Hildebrand*) and (*William Kenney*,) executors of (*William Hildebrand*,) deceased, in the place of said deceased plaintiff, without prejudice to the proceedings already had, and asking for such other and further relief as may be just,

VI. That no previous application has been made for such an order as is sought herein.

Sworn to before me this } (*WILLIAM KENNEY*,)
 (4th day of (*February*, 1907.) }
 (*GUSTAVUS PAUL*,)
 (Commissioner of Deeds,)
 (City of New York.)

FORM No. 167.

Order of Substitution and Continuance.

At a Special Term (*Part I*,) of the Supreme Court,
 County of (*New York*,) held at the County
 Court House (*Borough of Manhattan*,) in said
 county, on the (*12th*) day of (*February*, 1907.)

PRESENT:

Hon. (*LEONARD A. GIEGERICH*,) Justice.

(<i>WILLIAM HILDEBRAND</i> ,)	}
Plaintiff,	
against	
(<i>HARRIET ENGEL</i> ,)	
Defendant.	

Upon reading and filing the order to show cause, dated (*February 4th*, 1907,) and the accompanying affidavit of (*William Kenney*,) verified (*February 4th*, 1907,) and upon the pleadings and proceedings in this action, and upon hearing (*Julius Brough*,)

Consent.

attorney for the executors of (*William Hildebrand*,) deceased plaintiff, in support of said motion, and (*Henry Kopf*,) attorney for the defendant herein in opposition thereto, now, on motion of said (*Julius Brough*,) attorney for executors of (*William Hildebrand*,) deceased plaintiff,

ORDERED, that (*Margaret Hildebrand*) and (*William Kenney*,) as the executors under the last will and testament of (*William Hildebrand*,) deceased plaintiff herein, be and hereby are substituted as parties' plaintiff in the place of said (*William Hildebrand*) in this action, and that this action be and hereby is continued without prejudice to the proceedings already had.

Enter,

(*L. A. G.*,)

J. S. C.

FORM No. 168.

Consent to Substitution of Attorneys.

SUPREME COURT,

(*New York*) County.

(*JAMES BURKE*,)
Plaintiff,

vs.

(*MILES BRYAN*,)
Defendant.

It is hereby stipulated and consented that Messrs. (*Jones & Dobbs*) be substituted as attorneys for the (plaintiff *James Burke*) herein in place of (*John J. Ryan*) and that an order may be entered to that effect without further notice.

Dated, (*New York*, April 30, 1907).

(*JOHN J. RYAN*,)

Attorney for Plaintiff.

(*WILLARD BARRETT*,)

Attorney for defendant Miles Bryan.

(*JAMES BURKE*,)

Order.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (30th) day of (*April*, 1907), before me personally appeared (*James Burke*), to me personally known and known to me to be the plaintiff in the above-entitled action, and he duly acknowledged that he had executed the foregoing consent to substitution of attorneys.

(*JOHN BROWN*,)
Notary Public,
(*New York*) County,
No. (75).

FORM No. 169.

Order of Substitution on Consent (for New York County).

At a Special Term, Part II. of the Supreme Court of the State of New York, held in and for the County of New York, at the County Court House, in the (*Borough of Manhattan, City of New York*,) on the (*second*) day of (*May*, 1907).

PRESENT:

Hon. (*VICTOR J. DOWLING*,)
Justice.

(*JAMES BURKE*,)
Plaintiff,

vs.

(*MILES BRYAN*,)
Defendant.

Upon the annexed consent and upon motion of (*John J. Ryan*,) attorney for the plaintiff, it is

ORDERED that (*Jones & Dobbs*) be and they are hereby substituted as attorneys for the (*plaintiff*) in this action in place of (*John J. Ryan*.)

(*VICTOR J. DOWLING*,)
Justice of the Supreme Court.

Order On Consent.

FORM No. 170.

Order of Substitution on Consent (Outside of New York County).

NEW YORK SUPREME COURT,
(*Westchester*) County.

(<i>JAMES BURKE,</i>)	}
Plaintiff,	
vs.	
(<i>MILES BRYAN,</i>)	
Defendant.	

Upon the annexed consent and on motion of (*John J. Ryan,*) attorney for the plaintiff, it is

ORDERED that (*Jones & Dobbs*) be, and they hereby are, substituted as attorneys for the plaintiff in this action in place of (*John J. Ryan.*)

Dated, (*White Plains, N. Y., May 2, 1907.*)

(*MARTIN J. KEOGH,*)

Justice Supreme Court.

FORM No. 171.

Consent to Discontinuance.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JAMES BURKE,</i>)	}
Plaintiff,	
vs.	
(<i>MILES BRYAN,</i>)	
Defendant.	

The matters in controversy having been compromised, settled, adjusted and paid, it is hereby stipulated and consented by and between the attorneys for the respective parties hereto that the

Order.

above-entitled action be discontinued without costs to either party as against the other, and that an order discontinuing this action without costs may be entered without further notice to either party.

Dated, (*New York, April 15, 1907*).

(*JOHN J. RYAN,*)

Attorney for Plaintiff.

(*WILLARD BARRETT,*)

Attorney for Defendant (*Miles Bryan.*)

FORM No. 172.

Order of Discontinuance on Consent (New York County).

At a Special Term, Part II. of the Supreme Court of the State of New York, held in and for the County of (*New York,*) at the County Court House, in the (*Borough of Manhattan, City of New York,*) on the (*second*) day of (*May, 1907*).

PRESENT:

Hon. (*VICTOR J. DOWLING,*)

Justice.

(*JAMES BURKE,*)

Plaintiff,

vs.

(*MILES BRYAN,*)

Defendant.

Upon the annexed consent and on motion of (*Willard Barrett,*) attorney for the defendant,

ORDERED that this action be and the same hereby is discontinued without costs to either party as against the other.

(*VICTOR J. DOWLING,*)

Justice Supreme Court.

Order On Consent.

FORM No. 173.

Order of Discontinuance on Consent (Counties Other Than New York).

NEW YORK SUPREME COURT,
(*Westchester*) County.

(<i>JAMES BURKE</i> ,)	}
Plaintiff,	
vs.	
(<i>MILES BRYAN</i> ,)	
Defendant.	

Upon the annexed consent and the motion of (*Willard Barrett*), attorney for the defendant,

ORDERED that this action be and the same hereby is discontinued without costs to either party as against the other.

Dated, (*White Plains, New York, May 15, 1907*).

(*MARTIN J. KEOGH*,)
Justice Supreme Court.

NOTES OF ISSUE.

ORDER ON CALENDAR.—The date of the first of several issues determines the place of a case on the calendar.

FORM No. 174.

Note of Issue of Fact.

NEW YORK SUPREME COURT,
(*New York*) County.

(*JOHN DOE*),

Plaintiff,

against

(*DAVID ROE*),

Defendant.

} *Issue of fact to be tried
by court and jury.*

(*CHARLES J. JONES*), Plaintiff's Attorney.

(*WILLIAM P. SMITH*), Defendant's Attorney.

Issue joined on (*June 4, 1903*).¹

Notice filed by (*plaintiff*).²

Nature and object of action,³ *action to recover broker's commissions*. Should be placed on calendar No. (3).

Noticed for trial for (*October*) Term (1907)⁴

¹ Date last pleading were served.

² By whom filed.

³ Here state what action is for.

⁴ Term for which case noticed for trial.

FORM No. 175.

Note of Issue of Law.

NEW YORK SUPREME COURT,
(*New York*) County.

(*JOHN DOE*),

Plaintiff,

against

(*WILLIAM ROE*),

Defendant.

*Issue of law to be tried
by court without jury.*

(*CHARLES J. JONES*), Plaintiff's Attorney.

(*WILLIAM P. SMITH*), Defendant's Attorney.

Issue joined on (*June 4, 1903*).¹

Notice filed by (*plaintiff*).²

Nature and object of action,³ *action to reform a written instrument.*

Noticed for trial for (*October*) Term (1907)⁴

NOTICE OF TRIAL AND NOTE OF ISSUE.—Where leave is given to serve a reply the note of issue may be amended to show the new date of issue. Failure to serve a notice of trial is waived by not moving to strike off the case until it has twice appeared on the calendar. A second notice of trial is a waiver of the first. Irregularity in the notice is waived unless taken by appearing.

Where there are two causes with the same title, the notice must distinguish which is meant. A notice of trial is premature if served on the last day to answer and before service of the answer. A notice of trial served late at night on the last day is insufficient, but failure to give notice is waived by not moving to strike off the cause. Irregularity in serving notice of trial is waived by

¹ Date of service of last pleading.

² By whom notice is filed.

³ Here state what action is for.

⁴ Term for which case noticed for trial.

Notice Of Trial And Note Of Issue.

retaining notice. A motion will not lie to compel a party to accept service of a notice of trial, but if the service is proper the party serving should proceed under it.

A clerical error in the year stated in a notice of trial is waived by retaining the notice. Retention of a notice of trial served by mail does not waive shortness of the notice. After a cause is set for a day certain at plaintiff's request, or where he answered at the call of the calendar, and subsequently moved for an adjournment, he cannot object that no notice of trial was given; but where objection was made and overruled absence of notice of trial is not waived by proceeding. Service of notice before issue is waived by retaining the notice.

An amendment of the pleadings ordinarily requires a new notice of trial, but a party who has obtained leave to amend without prejudice cannot insist on a new notice of trial. No new notice of trial is required after service of a supplemental pleading. Nor is a new notice of trial necessary when case is reversed on appeal and a new trial ordered.

An action cannot be brought to trial by one of several codefendants while the others have not been served, but if all parties have been served a defendant having a separate defense may bring on the trial as to himself.

When two actions involve the same subject-matter the second will be ordered placed on the calendar next to the first. In New York county, application for such an order may be made on two days' notice to the justice calling the Friday call in Trial Term, Part III, when the earlier case appears on the call calendar. Moving for a second order to have a cause placed on the calendar waives a former one to the same effect.

A cause will not be stricken from the calendar for failure to serve one of the defendants, as the question can be better determined at the trial.

Motion.

FORM No. 176.

Note of Issue — For Motion.

SUPREME COURT,
(*New York*) County.

(JAMES THOMPSON,)	}
Plaintiff,	
against	
(FRANK WILSON) and (JEREMIAH HART.)	
	Defendants.

Motion by (*plaintiff*)¹ (*for receiver.*)²

Returnable Special Term Part I. (*March 18, 1907.*)³

(*Julius Mann,*) for (*plaintiff*⁴ and the motion.)⁵

(*Thomas Jones,*) opposed.

Note of issue filed by (*plaintiff.*)⁶

NOTE.

Notes of issue must be filed with the clerk two days before the day on which a motion is noticed to be heard, except where an order to show cause is granted returnable in less than two days, when the clerk shall place the motion upon the calendar at any time before the day for hearing, upon the exhibition to him of the order to show cause and the filing of a note of issue, or the justice assigned to said part of the court may place the motion on the calendar on the day upon which the order to show cause is returnable. (*Rule II, New York County, Supreme Court, Special Term Rules.*)

Notice for Special Term, Part I., New York County must contain, besides a proper title, return day and the nature of the motion, the names of the attorneys. It is also requested, to ensure proper publication, that the notes of issue be typewritten by rule adopted December 5, 1906.

¹ State which party.

² Nature of motion.

³ Date returnable.

⁴ State which party.

⁵ For the motion or opposed.

⁶ State which party.

CALENDAR PRACTICE (NEW YORK COUNTY).

NOTE.

Defaults are Dangerous and Serious.

"The taking of an inquest and the entering of judgment thereon, are not mere idle ceremonies to be brushed aside for the mere asking. Parties seeking to be relieved from their defaults must show a reasonable excuse for their neglect, and must establish a meritorious cause before they are entitled to the favor of the Court."

Clews v. Peper, 112 App. Div. 430 (First Department).

"Section 724 of the Code of Civil Procedure permits the court to 'relieve a party from a judgment, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect.' This is very far short of allowing the opening of defaults as a matter of course, as some seem to suppose. Many have come to think that the worst that can come from a default is the payment of ten dollars to open it. A default is a serious matter. The diligent litigant who respects the rules of the court is entitled to protection against those who have little or no regard for such rules."

Ironclad Mfg. Co. v. Steffen, 114 App. Div. 792.

FORM No. 177.

Order to Restore Case on Consent.

NEW YORK SUPREME COURT,
(*New York*) County.

(MATTHEW L. FRANCIS,)

Plaintiff,

against

(MAX KENDRICK,)

Defendant.

} Calendar No. (600).
on Calendar No. (3).

UPON READING AND FILING the annexed consent of the attorneys for the respective parties and upon motion of (*Louis H. Charles*), attorney for the plaintiff, it is

 Notice Of Motion.

ORDERED: That this action be and the same hereby is restored to Trial Term calendar No. 3 of this court.

Dated, (*New York, June 12, 1907*).

(*JOHN W. GOFF*),

Justice of the Supreme Court.

We hereby consent to the making and entry of the foregoing order.

Dated, New York (*January 12, 1907*).

(*GEORGE JEFFRIES*),

Attorney for (*defendant*).

(*LOUIS H. CHARLES*),

Attorney for (*plaintiff*).

 FORM No. 178.

Notice of Motion to Restore to the Call Calendar.*

NEW YORK SUPREME COURT,

(*New York*) County.

(*SARAH MORGAN*),

Plaintiff,

vs.

(*MARTHA JANEWAY*),

Defendant.

Sir:

PLEASE TAKE NOTICE, that upon the annexed affidavit of (*Warren S. Bird*) verified (*February 18, 1907*), and upon all the pleadings and proceedings herein, the undersigned will move this Court, at a Trial Term, Part III. thereof, to be held in and for the County of New York, in the County Court House, Borough of Manhattan and City of New York on (*Friday*) the (*first*) day of (*March, 1907*), at two o'clock in the afternoon of said day before the call of the calendar or as soon thereafter as counsel can be heard, for an order restoring this cause to the Trial Term Calendar No. (2) of this Court, and that it be set down for the Friday Call Calendar No. (2) next succeeding, and

* Two days' notice must be given and motion can be made returnable only on a call calendar day.

Affidavit.

that a day may be set for trial and for such other and further relief as to the Court may seem just and proper

Dated, (*New York, February 18, 1907.*)

Yours, etc.,

(*WILLIAMS & JACKSON*),

Attorneys for (*Plaintiff*),

(*31 Liberty street*),

(*New York City.*)

To

(*L. P. MINGON*), Esq.,

Attorney for (*Defendant*),

(*30 Broad Street*),

(*Borough of Manhattan*),

(*New York City.*)

FORM No. 179.

Affidavit on Motion to Restore to the Call Calendar.

NEW YORK SUPREME COURT,

(*New York*) County.

(*SARAH MORGAN*),

Plaintiff,

vs.

(*MARTHA JANEWAY*),

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*Warren S. Bird*), being duly sworn, says that he is a clerk in the office of (*Williams & Jackson*), attorneys for the (*plaintiff*) herein; that the (*plaintiff*) intends to prosecute the action in good faith and that the failure to answer said case upon the call of the calendar was not intentional, but was due to inadvertence and an oversight upon the part of deponent; that among other things it is deponent's duty to look over the calendars of this court to ascertain whether any of the cases in which said firm of (*Williams & Jackson*) are interested are on the calendar; that the above case appeared on the Friday Call Calendar No. (2) of this court on the (18th) day of (*January, 1907*), and

Order.

deponent in looking over the cases on said calendar failed to discover the above case and to attend on the call of said calendar, and the case was, therefore, marked "off." Deponent, therefore, respectfully asks that the above-entitled action be put on the next call calendar following, and that it be set for trial for a certain day.

(WARREN S. BIRD.)

Sworn to before me, this
 (18th) day of (*February*, 1907). }
 (OLIVER BENDER),
 Notary Public,
 (N. Y.) County.

FORM No. 180.

Order Restoring Case to Call Calendar.

NEW YORK SUPREME COURT,
 (*New York*) County.

(SARAH MORGAN,) Plaintiff,	} Cal. No. (696). on Cal. No. (2.)
vs.	
(MARTHA JANEWAY,) Defendant.	

A motion having been made to restore this cause No. (696), on Trial Term, Calendar No. (2) of this court to the Friday Call Calendar, and said motion duly coming on to be heard, now, upon reading and filing the notice of motion herein, dated the (18th) day of (*February*, 1907), and the affidavit of (*Warren S. Bird*), duly verified the same day with proof of due service thereof on (*Ralph Brewer*) attorney for the defendant herein, in support of said motion, and the affidavit of (*Ralph Benson*), verified the same day, in opposition thereto, and upon all the pleadings and proceedings herein.

NOW, on motion of (*Williams & Jackson*), attorneys for the plaintiff, it is

ORDERED that the above-entitled cause be, and hereby is, restored to the calendar of this court, No. (2), and that the

Notice Of Motion.

calendar clerk be and he hereby is directed to set this cause upon the next Friday Call Calendar No. (2).

Dated (*March 4, 1907*).

(*DAVID LEVENTRITT*),
J. S. C.

Restoring to Call Calendar After Jury Disagrees.

FORM No. 181.

Notice of Motion.*

SUPREME COURT,
(*New York*) County.

(*JAMES VANCE*),
Plaintiff,

vs.

(*JARED DOLAN*),
Defendant.

Sir:

PLEASE TAKE NOTICE, that upon the annexed affidavit of (*James Bates*), verified the (*19th*) day of (*February, 1907*), a motion will be made at a Trial Term, Part III. of this Court, to be held at the County Court House, in the Borough of Manhattan, City of New York, on the (*first*) day of (*March, 1907*), at 2 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, for an order directing that the above-entitled action be placed upon the next call calendar of causes to be called by the Justice holding Trial Term, Part III. of this court, for the purpose of having the said cause set down for trial for a future day.

Dated, New York (*February 27, 1907*).

Yours, etc.,

(*BATES & MARSHALL*),

Attorneys for (*Plaintiff*),

(*170 Broadway*),

(*Borough of Manhattan*),

(*City of New York*).

To

(*James L. Brown*), Esq.,

Attorney for (*Defendant*),

(*26 William Street*),

(*New York City*).

* This motion is made on two days' notice, and made returnable before justice calling Friday call calendar at 2 P. M., before call.

Affidavit.

FORM No. 182.

Affidavit on Motion to Restore After Disagreement.

SUPREME COURT,
(*New York*) County.

(*JAMES VANCE*),
Plaintiff,

vs.

(*JARED DOLAN*),
Defendant.

STATE OF NEW YORK, } ss.:
County of (*New York*), }

(*James Battle*), being duly sworn, deposes and says that he is a member of the firm of (*Bates & Marshall*), attorneys for the plaintiff above-named, with offices at (*172 Broadway, Borough of Manhattan*), city of New York; that he conducted the trial of this cause in behalf of the plaintiff before (*Mr. Justice McLean*) and a jury, sitting in Part (7), Trial Term of this Court, on the (7th) and (8th) days of (*February, 1907*), and that the jury on said trial disagreed. The plaintiff is desirous that the cause be again set for trial and deponent, therefore, asks that the cause be restored to its former position on Trial Term Calendar No. (2) of this court, and that the same be placed upon the next call calendar of this court.

(*JAMES BATTLE*).

Sworn to before me,
this (8th) day of (*March, 1907*). }

(*JENNY DOR*),
Notary Public,
(*N. Y.*) Co.

Order.

FORM No. 183.

Order Restoring Cause to Calendar after Disagreement.

SUPREME COURT,
(*New York*) County.

(*JAMES VANCE*),

Plaintiff,

vs.

(*JARED DOLAN*),

Defendant.

Cal. No. 600 on Cal. No. 2.

The above-entitled cause having come on for trial before (*Mr. Justice McLean*) and a jury, sitting in Part (7), Trial Term of this court, on the (7th) and (8th) days of (*February*, 1907), and the jury on the said trial having disagreed, and the motion having been made at a Trial Term, Part III. of this court, held in the County Court House, in the Borough of Manhattan, city of New York, on the (first) day of (*March*, 1907), for an order directing that this cause be placed upon the next Friday call calendar, for the purpose of having the said cause set down for trial for a future day; and on reading and filing the said notice of motion with proof of the due service thereon, and reading and filing the affidavit of (*James Bates*), of counsel for the plaintiff herein, verified the (19th) day of (*February*, 1907), and on motion of (*Bates & Marshall*), attorneys for the (plaintiff), it is

ORDERED that the said motion be and the same hereby is granted, and the clerk of the Trial Term, Part III., be and hereby is instructed to place the cause upon his next Friday call calendar accordingly.

Dated (*March 4*, 1907).

(*DAVID LEVENTRITT*).
J. S. C.

 Notice Of Motion.

Restoring to Call Calendar After Withdrawal of a Juror.

FORM No. 184.

Notice of Motion.*

SUPREME COURT,
(*New York*) County.

(<i>UNITED COMPANY</i>),	}
Plaintiff,	
vs.	
(<i>JAMES N. SMITH</i>),	
Defendant.	

Sir:

PLEASE TAKE NOTICE, that upon the annexed affidavit of (*Frank Warren*), verified the (*30th*) day of (*January, 1907*), and upon all the pleadings and proceedings herein, the undersigned will move this court at a Trial Term, Part 3, thereof, to be held in and for County of New York, in the County Court House, Borough of Manhattan, City of New York, on Friday (*March 1, 1907*), at two o'clock in the afternoon of said day, before the call of the calendar or as soon thereafter as counsel can be heard, for an order restoring this cause to the Trial Term Calendar, No. 3, of this court, and placing it on the Friday call calendar of Trial Term Calendar No. (3) next succeeding, so that it may be set for trial; and for such other and further relief as to the court may seem just and proper.

Dated, New York (*January 3, 1907*).

Yours, etc.,

(CHARLES T. AMES),

Attorney for (*plaintiff*),

Office and P. O. Address,

(*31 Liberty St.*),(*Borough of Manhattan*),(*New York City*).

To

(WILLIAM P. MINGON), Esq.,

Attorney for (*defendant*),(*30 Broad St.*),(*Borough of Manhattan, New York City*).

* Two days' notice must be given and motion can be made returnable only on a call calendar day.

Affidavit.

FORM No. 185.

Affidavit on Motion to Restore to Call Calendar After Juror With-
drawn.

SUPREME COURT,
(*New York*) County.

(UNITED COMPANY,)	} .
Plaintiff,	
vs.	
(JAMES N. SMITH,)	
Defendant.	}

STATE OF NEW YORK, } ss.:
County of (*New York*,)

(*Frank Warren*), being duly sworn, says that he is a clerk in the office of (*Charles T. Ames*), attorney for the plaintiff herein; that this cause came on for trial before Mr. Justice (*Seabury*) and a jury at Trial Term, Part (17), on the (22nd and 23^d) days of (*January*, 1907), and the defendant having made a motion for leave to withdraw a juror, the said motion was granted on condition that the defendant pay to plaintiff's attorneys thirty dollars costs of trial within ten days after service upon the attorney for the plaintiff of a copy of the order granting leave to withdraw a juror and notice of the entry thereof; that said order was duly served and the said costs duly paid; that this cause is No. (462) upon the Trial Term Calendar No. 3 of this court and that plaintiff desires an order restoring this cause to the next call calendar, which deponent is informed and believes will be called on the first Friday in (*April*, 1907), at two P. M. That no previous application has been made for this order.

(*FRANK WARREN.*)

Sworn to before me }
this (30th) day of (*January*, 1907). }

(*FRED SMITH*),

Notary Public,

(*N. Y.*) Co. No. (27).

Order.

FORM No. 186.

Order Restoring Case After Juror Withdrawn.

SUPREME COURT,
(*New York*) County.

(UNITED COMPANY,)

Plaintiff,

vs.

(JAMES N. SMITH,)

Defendant.

Cal. No. (462).

On Cal. No. (3).

This cause having come on for trial before Mr. Justice (*Samuel Seabury*) and a jury, at Trial Term, Part (17), on the (22nd and 23rd days of *January*, 1907), and the (*defendant*) having made a motion for leave to withdraw a juror, and the said motion having been granted, on condition that (*defendant pay to the plaintiff's attorneys, \$30 costs of trial*), within ten days after the service upon his attorneys of a copy of the order granting leave to withdraw a juror and notice of entry thereof, and said order having been served as aforesaid, and said costs having been paid, and after reading and filing the pleadings herein and the affidavit of (*Frank Warren*), verified the (30th) day of (*January*, 1907), and there being no opposition;

NOW, on motion of (*Charles T. Ames*), attorney for the plaintiff, it is

ORDERED, that this cause be restored to the calendar of this court, and that the calendar clerk of this court be, and hereby is, instructed to place this cause upon the call calendar of this court for the first Friday in (*April*, 1907).

(SAMUEL SEABURY.)

(J. S. C.)

Dated (*February 5*, 1907).

Consent.

Note.—Where a juror is withdrawn to permit a motion to amend, and the motion is thereafter denied, plaintiff is entitled to an order restoring the case to the calendar.

After reversal on appeal, either party is entitled to an order placing the cause on the calendar, and no notice of trial is necessary.

FORM No. 187.**Consent to Restore Cause Marked "Reserved Generally" to Call Calendar.***

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JAMES FRISBIE</i> ,)	}	No. (696) on Calendar No. (2).
Plaintiff,		
vs.		
(<i>WILLIAM STORM</i> ,)		
Defendant.		

The above entitled cause No. (696), on Trial Term Calendar No. (2) of this court, and which is now reserved generally, having been reached in its regular order.

It is hereby consented and stipulated that the same be placed on the next Friday call calendar of Trial Term, Calendar No. (2).

Dated (*New York, April 2, 1907*):

(*FRANK GRANT*),
Attorney for plaintiff.

(*EDGAR KELLOGG*),
Attorney for defendant.

* Upon the filing of above consent with the Trial Term Calendar clerk, the cause is restored, without the entry of an order. (*Rule 1, Trial Term Rules, 1st Dist.*).

Notice Of Motion.

FORM No. 188.

Notice of Motion to Place Cause on Call Calendar After Reversal.*

NEW YORK SUPREME COURT,
(*New York*) County.

(JAMES FRISBIE,)

Plaintiff,

vs.

(WILLIAM STORM,)

Defendant.

Sir:

PLEASE TAKE NOTICE, that upon the affidavit of (*John Gale*), verified the (20th) day of (*April, 1907*), a copy of which is hereto annexed, and on the pleadings and proceedings herein, I will move before the justice calling the Friday calendar at a Trial Term, Part III, of this court, to be held at the County Court House, (*Borough of Manhattan, New York City*), on (*May 6, 1907*), at 2 o'clock in the afternoon, or as soon thereafter as counsel can be heard for an order, pursuant to Rule II of the Trial Term, Supreme Court Rules, placing this cause on the next succeeding Friday call calendar, and for such other and further relief as to the court shall seem just and proper in the premises.

Yours, etc.,

(FRANK GRANT,)

Attorney for Plaintiff,

Office and P. O. address,

(32 Pine Street,)

(*Borough of Manhattan*,)(*New York City*.)

To

(EDWARD CASE,) Esq.,

(32 Liberty Street,) (*New York*.)

* Two days' notice must be given and motion must be made returnable at Trial Term, Part III, before justice calling call calendar, and before call. (*Rule II, Trial Term Supreme Court Rules.*)

Affidavit.

FORM No. 189.

Affidavit on Motion to Place Cause on Call Calendar After Reversal.

NEW YORK SUPREME COURT,
(*New York*) County.

(JAMES FRISBIE,)

Plaintiff,

vs.

(WILLIAM STORM,)

Defendant.

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*John Gale*), being duly sworn, deposes and says that he is (*managing clerk in the office of (Frank Grant)*), the attorney for the (*plaintiff*) herein, that this cause No. (696) on the Trial Term Calendar (*No. 2*) of this court was duly tried and appealed to the Appellate Division and that the judgment was reversed by said Appellate Division, and a new trial ordered.

(JOHN GALE.)

Sworn to before me, this (20th) }
day of (*April*, 1907). }

(ELMER JONES),

Notary Public,

N. Y. Co. (*No. 296*).

Order.

FORM No. 190.

Order Restoring Cause to Call Calendar After Reversal, on Motion.

NEW YORK SUPREME COURT,
(*New York*) County.

(JAMES FRISBIE,)

Plaintiff,

vs.

(WILLIAM STORM,)

Defendant.

No. (696) on Cal No. (2).

Upon reading and filing the notice of motion of the plaintiff herein to restore this cause to the call calendar, and to set same down for the next call of said calendar, and the affidavit of (*John Gale*), verified the (2nd) day of (*April*, 1907), with proof of due and timely service thereof upon the attorney for the defendant, and upon the pleadings and all the proceedings herein, and on motion of (*Frank Grant*), attorney for the (*plaintiff*), it is

ORDERED that said motion be and the same hereby is in all respects granted, and that this cause now No. (696) on Trial Term Calendar No. (2) of this court be, and hereby is, restored to the call calendar, and the clerk is directed to place same on the next Friday call calendar of Trial Term Calendar No. (2).

(DAVID LEVENTRITT,)

Justice Supreme Court.

Consent.

FORM No. 191.

Consent to Restore Cause to Call Calendar After Reversal.*

NEW YORK SUPREME COURT,
(*New York*) County.

(JAMES FRISBIE,)

Plaintiff,

vs.

(WILLIAM STORM,)

Defendant.

No. (696) on Cal. No. (2).

The above entitled cause, No. (696) on Trial Term Calendar No. (2) of this court having been reversed by the Appellate Division and a new trial ordered.—It is hereby consented and stipulated that the same be placed on the next Friday Call Calendar to be called (*April 5, 1907*).

Dated (*New York, April 2, 1907*).

(FRANK GRANT),

Attorney for (*plaintiff*.)

(EDGAR KELLOGG),

Attorney for (*defendant*.)

* After reversal on appeal, either party is entitled to an order placing the cause on the calendar and no notice of trial is necessary.

 Note.

FORM No. 192.

Consent to Reserve Case Generally.

NEW YORK SUPREME COURT,
(*New York*) County.

(JAMES FRISBIE,)

Plaintiff,

vs.

(WILLIAM STORM,)

Defendant.

No, (696) on Calendar
No. (2).

It is hereby consented and stipulated that the above entitled cause No. (696) on Trial Term Calendar No. (2) of this court be reserved generally.

Dated (*New York*, April 10, 1907).

(FRANK GRANT),

Attorney for (*plaintiff*).

(EDGAR KELLOGG),

Attorney for (*defendant*).

 PREFERENCES.

NOTE.

PREFERENCES.—Formerly preferences were granted under § 791 of the Code simply upon the pleadings and a notice of preference, and the case was set down for a day certain during the term at which the application was made for trial. This law was held unconstitutional. (*Morse v. Press Pub. Co.*, 71 App. Div. 351.)

Under the present practice, therefore, no preference can be obtained based solely upon the nature of the action except over the issues of the same term (*Eising v. Young*, 38 Misc. 12; *Davis*

Over Issues Of Same Term.

v. Westervelt, 38 Misc. 13), although at first it would seem that the right to this slight preference rests in the discretion of the court, and that facts must be presented other than that the case is one which might be preferred under § 791 of the Code. (See *Carroll v. Penn. Steel*, 96 App. Div. 165.) A later decision indicates that, where only a preference over issues of the same term is asked no additional facts need be stated to warrant the exercise of the court's discretion. (*Martin's Bank v. Amazonas Company*, 98 App. Div. 146.)

Independent of the rules of procedure, every court has inherent power to grant preferences on its own calendar. The right to a preference in an action where an order of arrest has been granted inures to both parties, as does that of an administrator; otherwise as to the preference of the sheriff.

An action by an administrator for death by wrongful act is preferred over issues of the same term, but it is only those actions which an executor brings in his representative capacity which are entitled to any preference; and, where another person is joined with him, there is no right of preference. To obtain a preference because the right of dower is involved, it must appear that the widow is dependent on such dower for support.

An action is entitled to a preference as being for the construction of a will only where it is directly for that purpose. A right of preference is waived by joining causes of action as to which there is no such right.

Procedure to Obtain Preference Over Issues of Same Term.

Notice of application for a preference must be served with a notice of trial or at least, fourteen days before the term when the notice of trial has been previously served, but where the application is made not under the Code, but under local rules, this is not necessary.

Where both parties notice the action for trial without claiming a preference, the right is waived. Where a preference is lost by failure to claim it, it cannot be regained by serving an amended pleading.

An order for preference cannot be granted before notice of trial or note of issue.

The judge has exclusive power to correct the calendar. An order granting a preference may be vacated by the judge holding the trial term.

 Claim Of With Notice Of Trial.

FORM No. 193.

Separate Notice of Claim for Preference (to be Served With Notice of Trial).

NEW YORK SUPREME COURT,
County of (*New York*).

(THE GARVILLE BANK, Plaintiff, against (THE STEEL TOOL COMPANY), Defendant.	}
---	---

Sirs:

PLEASE TAKE NOTICE, that upon the pleadings herein, we shall move this court at the Trial Term, Part II. thereof, to be held at the County Court House, Borough of Manhattan, City of New York, on the (*sixth*) day of (*June*, 1906), at 10:30 A. M., or as soon thereafter as counsel can be heard for an order giving this cause, No. (696,) on the Trial Term Calendar (*No. 2*), a preference over the non-preferred issues noticed for trial at the (*June*) term of this court, the same term for which this cause was noticed upon the ground that this cause is an action (*for libel*), being one of the cases mentioned in sub-div. (11), § 791 of the Code of Civil Procedure, and for such other and further relief as to the court may seem just and proper.

Dated (*New York, May 23*, 1906).

Yours, etc.,

(GRANT & SMITH),

Attorneys for (*plaintiff*),

Office and P. O. Address,

(*40 Broad St.*),

(*Borough of Manhattan*),

(*N. Y. City*).

To

Messrs. (MOORE & JAMES),

Attorneys for (*defendant*),

(*290 Broadway*),

(*N. Y. City*).

Claim Of With Notice Of Trial.

FORM No. 194.

Notice of Claim of Preference and Notice of Trial Combined.

NEW YORK SUPREME COURT,
County of (*New York.*)

(*THE GARVILLE BANK,*)

Plaintiff,

against

(*STEEL TOOL COMPANY,*)

Defendant.

Sirs:

PLEASE TAKE NOTICE, that the issues of fact in this action will be brought to trial and an inquest taken therein at a Trial Term of this court, appointed to be held in and for the County of New York, at the County Court House, Borough of Manhattan, city of New York, on the (6th) day of (*June, 1906*), at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

ALSO PLEASE TAKE NOTICE, that an application will be made pursuant to subdivision (8) of § 791 of the Code of Civil Procedure, at a Trial Term, Part II. of this court, to be held at the County Court House, Borough of Manhattan, New York City, on the (6th) day of (*June, 1906*), at the opening of court on that day or as soon thereafter as counsel can be heard, for an order giving this cause a preference over all non-preferred issues noticed for the (*June*) term.

Dated (*New York, May 23, 1906*).

Yours, etc.,

(*GRANT & SMITH*),

Attorneys for Plaintiff,

Office and P. O. Address,

(*40 Broad St.*),

(*Borough of Manhattan*),

To

Messrs. (*MOORE & JAMES*),

(*N. Y. City*).

Attorneys for Defendant,

(*390 Broadway*),

New York City.

Order Granting.

FORM No. 195.

Order of Preference.

At a Trial Term, (*Part II.*) of the New York Supreme Court, held in and for the County of (*New York,*) at the County Court House, in the (*Borough of Manhattan,*) the (*2d*) day of (*June,* 1906).

PRESENT:

Hon. (*DAVID DAVENPORT*),
Justice.

<p>(<i>GARVILLE BANK, Limited,</i>) Plaintiff, against (<i>THE STEEL TOOL COMPANY,</i>) Defendant.</p>	}	Calendar No. (742) on Cal. No. (2).
--	---	--

The plaintiff having made a motion to place this cause upon the calendar of the court for the trial of preferred causes pursuant to subdivision 8 of § 791 of the Code of Civil Procedure, and the said motion having duly come on to be heard, and after reading and filing the pleadings herein, in support of said motion, and there being no opposition thereto, it is on motion of Grant & Smith, attorneys for the plaintiff,

ORDERED, that the said motion be and the same hereby is granted, and the above-entitled action be and the same hereby is given a preference over all non-preferred causes noticed for the (*June*) term.

Enter,
(*D. D.*)
J. S. C.

Claim Of And Notice Of Trial.

Procedure to Obtain a Preference Over Issues of Prior Terms.

FORM No. 196.

Notice of Trial and Notice of Preference Combined.

NEW YORK SUPREME COURT,
County of (*New York*.)

(FRANK WILSON,
Guardian ad litem of
BESSIE DANIELS,)
Plaintiff,

vs.

(JAMES ELWELL COMPANY,)
Defendant.

Sirs:

PLEASE TAKE NOTICE, that the issues of fact in this action will be brought to trial and an inquest taken therein at a trial term of this court appointed to be held in and for the County of (*New York*), at the County Court House, (*Borough of Manhattan, City of New York*), on the (6th) day of (*June*, 1906), at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

ALSO PLEASE TAKE NOTICE, that upon the pleadings herein and upon the affidavit of (*Frank Wilson*), verified the (23d) day of (*May*, 1906), we shall move this court at a Trial Term, (*Part II.*) thereof, to be held at the County Court House, (*Borough of Manhattan, City of New York*), on the (16th) day of (*June*, 1906), at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order preferring this cause, No. (696) on the trial term calendar (*No. 3*), and putting same upon the (*next call*) calendar on the ground shown in the accompanying affidavits, and for such other and further relief as to this court may seem just and proper.

Dated (*New York, May 23*, 1906).

Yours, etc.,

(GRANT & SMITH),

Attorneys for Plaintiff,

(40 Broad St.), New York City.

To

Messrs. (MOORE & JAMES),

Attorneys for Defendant,

New York City.

Affidavit.

FORM No. 197.

Affidavit for Preference — Over Issues of Prior Term.

NEW YORK SUPREME COURT,
County of (*New York*.)

(FRANK WILSON, Guardjan ad litem of BESSIE DANIELS, an Infant,) Plaintiff, vs. (JAMES ELWELL COMPANY,) Defendant.	}
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STATE OF NEW YORK }
County of (*New York*), } ss.:

(*Frank Wilson*), being duly sworn, says: I am the plaintiff above-named (and the guardian ad litem of *Bessie Daniels*, the infant), and am familiar with the above-entitled action. It is brought to recover the sum of (\$2,436.95 on account of a certain draft drawn by *Fred Barn & Company* at *London, England*, on the 9th day of *January*, 1904, and accepted by the defendant.) This action was commenced by the service of the summons and complaint herein on the (23d) day of (*March*, 1905). Thereafter and on or about the (second) day of (*May*, 1905), the defendant served its answer herein, appearing by Messrs. (*Moore & James*). This action is ("an action against a corporation, founded upon a note or other evidence of debt for the absolute payment of money,") and is entitled to a preference pursuant to § 791, subdivision (8), of the Code. Deponent further says (that the draft sued on was purchased of said *Barn & Company* with the funds of the infant herein, said funds being the share of said infant in its father's estate and the only means of support which said infant has. That said *Bessie Daniels*, as appears by the affidavit of *Brander Masson* hereto attached, has for several months been in a critical state of health which requires that for the restoration of her health she be removed and remain indefinitely in a warmer and drier climate.) Deponent further says (that said infant has no means out of which the expense of such a trip may be defrayed other than the draft herein sued on).

Order Granting.

WHEREFORE, deponent asks that this cause be granted a preference, and that it be placed on the (*next call*) calendar of Trial Term Calendar No. (3).

(FRANK WILSON.)

Sworn to before me, this }
(23d) day of (*May*, 1907.) }

(RALPH BRILL),

Notary Public (No. 236),

(*New York*) County.

FORM No. 198.

Order Preferring Cause Over Issues of Prior Terms.

At a Trial Term, (*Part II.*) of the Supreme Court, held in and for the County of New York, at the County Court House, in the (*Borough of Manhattan, City of New York,*) on the (3d) day of (*June*, 1907).

PRESENT:

Hon. (SAMUEL SEABURY),
Justice.

(FRANK WILSON,

as guardian ad litem of

BESSIE DANIELS.)

Plaintiff,

against

(JAMES ELWELL COMPANY,)

Defendant.

Calendar No. (4651)
on Calendar No. (3).

The plaintiff herein having moved for an order giving this action a preference and setting it down upon the (*next call*) calendar, and said motion having come on to be heard.

On reading and filing the affidavit of (*Frank Wilson*), verified the (23d) day of (*May*, 1907), the notice of motion and notice of trial with proof of due service thereof, and the pleadings herein,

 Notice Of Motion.

in support of said motion, and the affidavit of (*Charles Horton*), verified the (*first*) day of (*June, 1907*), in opposition thereto.

NOW on motion of (*Grant & Smith*), attorneys for the plaintiff, it is

ORDERED that the above-entitled case No. (4651) be tried as a preferred cause and placed upon the (*next call*) calendar of Trial Term Calendar No. (3) of this court.

Enter,
(*S. S.*)
J. S. C.

FORM No. 199.

Notice of Motion to Place Case on Special Calendar Under Subdivision 2 of Rule V, First District.*

SUPREME COURT,
(*New York*) County.

<div style="border-top: 1px solid black; border-bottom: 1px solid black; padding: 10px 0;"> <p>(<i>JONATHAN THOMAS</i>),</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>(<i>EDGAR TREVILLE</i>),</p> <p style="text-align: right;">Defendant.</p> </div>	}	
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Sir:

PLEASE TAKE NOTICE that upon the annexed affidavit of (*Jonathan Thomas*), verified the (22*d*) day of (*November, 1906*) and upon all the pleadings herein I shall move this court, at a Trial Term, Part II. thereof, to be held at the County Court House (*Borough of Manhattan, City of New York*), on the (2*d*) day of (*December, 1906*) at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order placing said cause upon the special calendar of this court

* Two days notice must be given. The motion may be made returnable on any day of the term.

Papers and answering affidavits must be filed with the clerk of Trial Term, Part II., before noon of the day for which the application is noticed. *No oral argument is allowed.*

See rule V, subdivision 2, Trial Term Rules, First District.

Affidavit.

for trial upon the grounds specified in subdivision 2 of rule V of the Trial Term Rules, First Department, upon the ground that this is an action to recover a debt due under a negotiable note given by the defendant to the plaintiff and upon all other grounds stated in said rule, and for such other and further relief as to the court may seem just and proper in the premises.

Dated, (*November 27th, 1906.*)

(*CHARLES SKINNER,*)

Attorney for Plaintiff,

(*27 William Street,*)

(*Borough of Manhattan,*)

(*New York City.*)

To

(*WILLIAM W. WADLEIGH,*) Esq.,

Attorney for Defendant,

(*220 Broadway,*)

(*New York City.*)

FORM No. 200.

Affidavit to Secure Order Placing Case on Special Calendar Under
Subdivision 2 of Rule V, First Department.

SUPREME COURT,
(*New York*) County.

(*JONATHAN THOMAS,*)
Plaintiff,

vs.

(*EDGAR TREVILLE,*)
Defendant.

STATE OF NEW YORK, } ss.:
County of (*New York*), }

(*JONATHAN THOMAS,*) being duly sworn, says:

I. That he is the plaintiff in the above-entitled action; that said action is brought to recover the sum of (\$5,000) due on a promissory note given by the defendant to the plaintiff, of which the following is a copy:

Affidavit.

("Thirty days after date I promise to pay Jonathan Thomas or order Five Thousand Dollars (\$5,000.) with interest, for value received.

"Dated, New York, September 2d, 1906.

("Signed) EDGAR TREVILLE.")

and the original of which is produced and exhibited to this court.

II. That said note was given for a good and valuable consideration, namely, the sum of (*five thousand*) dollars (\$5,000 *in cash*) given by the plaintiff to the defendant on that date at (*the Hotel Astor, New York City*) and said note was signed and delivered by the defendant in the presence of the plaintiff and (*Frank Wilson,*) whose affidavit is hereto annexed.

III. That on the (*2d*) of (*October,* 1906) deponent (*wrote to defendant, demanding payment of said note, a copy of which letter is hereto attached and made a part of this affidavit. That on October 5, 1906, deponent received a letter from defendant in reply in which defendant stated that he had intended to meet said note on its due date, but would be unable to pay same before November 1, 1906, when he would pay the said note in cash.*) A copy of said (*letter*) is hereto annexed and made a part of this affidavit. That, notwithstanding defendant's said statements and promises, no part of said note has been paid.

IV. On information and belief, that there is no substantial defense to the action; that the answer was not interposed in good faith and was interposed for the purpose of delay.

V. That this action has been duly noticed for the (*December*) Term and is now upon the Trial Term calendar No. (3,) being No. (8621.)

(*JONATHAN THOMAS.*)

Sworn to before me this (*22d*) day }
of (*December,* 1906.) }

(*WILLIAM WILLIAMS,*)

Notary Public,

(*New York*) County.

Order.

FORM No. 201.

Order Placing Case on Calendar Under Subdivision 2 of Rule V,
First Department.

At a Trial Term, Part II, of the New York Supreme Court, held in and for the County of (*New York*), at the County Court House (*Borough of Manhattan*), on the (*5th*) day of (*December*, 1906.)

PRESENT:

Hon. (*DAVID LEVENTRITT*),
Justice.

(*JONATHAN THOMAS*),
Plaintiff,

vs.

(*EDGAR TREVILLE*),
Defendant.

Calendar No. (8621)
on Calendar No. (3).

The plaintiff herein, having moved for an order placing the above cause upon the special calendar of this court for trial, and said motion having come on to be heard, after reading and filing the notice of motion, dated (*November 27*, 1906,) with due proof of service thereof, the affidavits of (*Jonathan Thomas and Francis Wilson*), verified the (*22d*) day of (*November*, 1906,) in support of said motion, the affidavits of (*William W. Wadleigh and Edgar Treville*), verified the (*30th*) day of (*November*, 1906,) in opposition hereto, and upon all the pleadings herein, it is

ORDERED that the above entitled cause be placed upon the special calendar of this court, Part II. of the Trial Term for trial.

Enter,
(*D. L.*)
J. S. C.

 Notice Of Motion.

Procedure for Preference Under Rule 36, G. P. R.*
FORM No. 202.
Notice of Trial and Notice of Preference Combined.

SUPREME COURT,
(*New York*) County.

(JONATHAN HARGIS,)	}	Plaintiff,
against		
(ELSA WILLIAMS,)		Defendant.

Sirs:

PLEASE TAKE NOTICE that the issues of fact in this action will be brought to trial, and an inquest taken therein at a Trial Term of this court, appointed to be held in and for the county of (*New York*), at the County Court House, (*Borough of Manhattan, City of New York*), on the (*6th*) day of (*October, 1907*), at 10:30 o'clock of the forenoon of that day, or as soon thereafter as counsel can be heard.

Also please take notice that at the same time an application will be made to the court at Trial Term, (*Part II*) thereof, on the annexed affidavit of (*Edward Jarvis*), for an order advancing this action on the calendar as a preferred cause pursuant to Rule 36 of the General Rules of Practice.

Yours, etc.,

(JARVIS & SMITHERS,
Attorneys for (*plaintiff*),

Office and Post Office Address,
(*4 Broad Street*),

(*Borough of Manhattan*),

(*New York City*.)

To

Messrs. (MOORE & JANSEN),

Attys. for (*deft.*), (*390 Broadway*), (*New York City*.)

* Two days notice of motion should be given. If either the defendant be imprisoned under an order of arrest, or the property of defendant is held under an attachment the trial may be preferred. Either plaintiff or defendant can make the motion, but neither party if defendant is out on bail. (*Rule 36, G. P. R.*)

Affidavit.

FORM No. 203.

Affidavit to Obtain Preference Under Rule 36, G. P. R.

SUPREME COURT,

(New York) County.

(JONATHAN HARGIS,)

Plaintiff,

against

(ELSA WILLIAMS,)

Defendant.

STATE OF NEW YORK, }
County of (New York,) } ss.:

(EDWARD JARVIS,) being duly sworn, says: that he is an attorney and counsellor at law, and one of the members of the firm of (Jarvis & Smithers,) attorneys for the plaintiff in the above entitled action. That this action was brought on or about the (13th) day of (April, 1907,) by service of a summons and verified complaint on the defendant. That on or about the (28th) of (April, 1907,) and before the defendant had appeared in the action, or answered an attachment issued out of this court, and on or about the (28th) of (April, 1907,) the sheriff of the county of (New York) levied upon certain property of the defendant in the State and county of New York, and said property is still held under attachment. The answer was served on or about the (6th) day of (June, 1907,) and an amended answer on or about the (6th) day of (July, 1907.)

Deponent further says, that the action was brought to recover of the defendant the sum of (\$918.91,) for (work, labor and services performed and rendered) for defendant by the plaintiff, and for (materials and supplies delivered by the latter to the former.)

Deponent, therefore, respectfully asks that this cause be advanced upon the calendar of this court pursuant to Rule 36 of the General Rules of Practice. (EDWARD JARVIS.)

Sworn to before me this (11th) }
day of (September, 1907.) }

(WILLIAM FAIN,)

Notary Public, (No. 79,) (New York) County.

Order Granting.

FORM No. 204.

Order for Preference Under Rule 36, G. P. R.

At a Trial Term, (*Part II*,) of the New York Supreme Court, held in and for the County of (*New York*,) at the County Court House in the (*Borough of Manhattan*,) the (*8th*) day of (*October*, 1907.)

PRESENT:

Hon. (*DAVID DAVENPORT*,) Justice.

(*JONATHAN HARGIS*,)
Plaintiff,
against
(*ELSA WILLIAMS*,)
Defendant.

Calendar No. 612 on Cal.
(No. 3.)

The plaintiff having moved this court to place this cause upon the calendar of the court for the trial of preferred causes, pursuant to Rule thirty-six (36) of the General Rules of Practice, and the said motion having duly come on to be heard, and after reading and filing the pleadings herein, and the notice of trial with notice of preference, and due proof of service thereof, and the affidavit of (*Edward Jarvis*,) verified the (*11th*) day of (*September*, 1907,) in support of said motion, and the affidavits of (*William Levy*) and (*William Rusk*,) verified the (*6th*) day of (*October*, 1907,) in opposition thereto, and due deliberation having been had, it is, on motion of (*Jarvis & Smithers*,) attorneys for the (*plaintiff*,)

ORDERED that the said motion be, and the same hereby is granted, and above entitled action be, and the same hereby is granted a preference, and the Clerk is directed to place the same on the next call calendar.

Enter,
(*D. D.*,)

J.

SHORT CAUSES.

NOTE.—Placing a cause on the short cause calendar is in the discretion of the court. When a cause has been placed on the short cause calendar, it remains there until disposed of. Attorneys are bound to be prepared for trial of short causes on any day after that for which the cause was set. The order placing the cause on the short cause calendar must be served before the cause can be brought to trial under it.

FORM No. 205.

Notice of Motion to Place Case on Special Calendar as a Short Cause.*

SUPREME COURT,
(*New York*) County.

(<i>MATTHEW L. FRANCIS,</i>)	}
Plaintiff,	
against	
(<i>MAX KENDRICK,</i>)	
Defendant.	}

Sir:

PLEASE TAKE NOTICE, that upon the pleadings herein and the annexed affidavit of (*Herman F. Stephens*), verified (*January 2, 1906*), I shall move this court at a Trial Term, Part II thereof, to be held at the County Court House, in the Borough of Manhattan, City of New York, on the (*10th*) day of (*January, 1906*), at (*10:30*) o'clock in the (*fore*)noon of that day placing this cause upon the special calendar of this court for the trial of short causes under Trial Term Rule V. on the ground

* Two days' notice must be given. The motion may be made returnable on any day of the term. Papers and answering affidavits must be filed with the Clerk of Trial Term, Part II, before noon of the day for which the application is noticed. *No oral argument is allowed.* See Rule V, subd. 3, Trial Term Rules, First District.

Affidavit.

that the trial of same will not occupy more than two hours and for such other and further relief as to the court may seem just and proper in the premises.

Dated (*January 2, 1906*).

(*HERMAN F. STEPHENS*),

Attorney for Plaintiff,

(*27 Pine Street*),

(*Borough of Manhattan*),

(*New York City*).

To

(*WILLIAM FRENCH*), Esq.,

Attorney for Defendant,

(*200 Broadway*),

(*Borough of Manhattan*),

(*City of New York*).

FORM No. 206.

Affidavit on Motion to Advance Cause to Short Cause Calendar.

SUPREME COURT OF THE STATE OF NEW YORK,

County of (*New York*).

(*MATTHEW L. FRANCIS*),

Plaintiff,

against

(*MAX KENDRICK*),

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*HERMAN F. STEPHENS*), being duly sworn, deposes and says:

1. That he is the attorney for the plaintiff herein; that this action was brought to recover upon (*a promissory note, made by the defendant, for two thousand dollars*).

2. That the answer of the defendant herein sets forth (*substantially a general denial of the allegations of the complaint and sets up no new matter by way of defense*).

Affidavit.

3. That the summons and complaint herein were served on the defendant (*Max Kendrick*), on the (20th) day of (*November, 1905*), and thereafter and on the (12th) day of (*December, 1905*), said defendant appeared herein by (*William French*), his attorney.

4. That issue was joined herein by the service of defendant's answer on the (20th) day of (*December, 1905*), and that thereafter and on the (22nd) day of (*December, 1905*), the plaintiff served a notice of trial herein for the first Monday in (*January, 1906*), and that note of issue has been filed, and that this case is number (696) on Trial Term Calendar No. 3 of this court.

5. Deponent further says that he verily believes that this action can be tried inside of two hours, and sets forth as his reasons therefor, the following: (*The production and proof of the note above mentioned and proof of the amount of interest, is all the evidence required to be offered by plaintiff to establish his case, and will not take more than fifteen minutes.*)*

6. Deponent believes that the answer of defendant has been interposed for delay only, as there is no legal defense to the note sued upon.

7. That no previous application has been made for this order.
(*HERMAN F. STEPHENS.*)

Sworn to before me, this }
(2nd) day of (*January, 1906*). }
(*H. L. NATHAN*),

Notary Public,
(*New York*) County, No. (291).

* ANOTHER INSTANCE.—The cause of action set forth in the complaint is upon contract, to-wit, a contract made by defendant to purchase from the plaintiffs one car of choice brewing New York State hops of the crop of 1905, at twenty-seven cents a pound; and the answer of the defendant sets up that the said contract as set forth in the complaint was modified after the same had been made, by which modification the purchase price thereof was changed from twenty-seven cents a pound to the market price not to exceed twenty-seven cents. The only question of fact, therefore, is whether or not the said modification was made with the plaintiffs' consent or by their authorization, and the consideration therefor. Inasmuch as the said modification is alleged in the answer to be in writing it will not take long to prove the same and whether or not it was executed by plaintiffs or by anybody authorized by them, will require but very little time to prove.

The said answer admitting the contract sued upon and setting forth a defense in avoidance thereof, the entire time which will be consumed in taking testimony as to the issues raised by said answer in my opinion will not exceed one hour.

Affidavit In Opposition.

FORM No. 207.

Affidavit in Opposition to Motion to Advance Short Cause.
SUPREME COURT OF THE STATE OF NEW YORK,
(*New York*) County.

(MATTHEW L. FRANCIS,)	} Plaintiff,
against	
(MAX KENDRICK,)	
	Defendant.

STATE OF NEW YORK, } ss.:
County of (*New York*), }

(*WILLIAM FRENCH*), being duly sworn, deposes and says: That he is the attorney for the defendant herein. That this action is brought to recover of defendant (*as maker of a promissory note two thousand dollars and protest fees and interest on a promissory note*).

2. (*That the defendant has interposed a verified answer which for a first defense sets up that there has been a failure of consideration for said note, and for a second defense, and by way of counterclaim, sets forth another cause of action arising on contract upon which defendant demands judgment against plaintiff for the sum of (\$274.61). That plaintiff has served a reply to said answer, wherein he sets up a defense to the said counterclaim.*

3. That deponent verily believes that the defendant has a good and legal defense to the cause of action set forth in the complaint herein (*and a good cause of action arising out of the facts set forth in the counterclaim in the answer herein*).

4. That the deponent is informed and believes that the transactions between plaintiff and defendant out of which arose, and upon which are based, the causes of action set forth in the complaint and answer herein, and the defenses interposed to said causes of action respectively cover a period of over a (*year*) in which time plaintiff and defendant have been intimately associated in business and have had a great number of business transactions with one another, which said transactions relate to and consist of goods sold and delivered, work, labor and services rendered, money had and

Affidavit In Opposition.

received and promissory notes by and between the parties to this action, all of which are material and relevant to the cause of action and counterclaim herein.

That the defendant will be necessarily obliged to call and examine at least (*six*) witnesses.

That it is essential and material to a fair trial of this action, and to a fair presentation of the facts set forth in the complaint, answer and reply herein, that the transactions, settlements and accounts had by and between plaintiff and defendant be gone into and examined in detail, at length both on direct and cross-examination.

That the trial of this case cannot possibly be had in two hours, and that deponent verily believes said trial will occupy (*a half day*) at least.

(*WILLIAM FRENCH.*)

Sworn to before me, this }
(13th) day of (*January*, 1906). }

(*H. L. SMITH*),

Notary Public,

(*New York*) County, No. (62).

FORM No. 208.

Affidavit in Opposition to Motion to Advance Case to Short Cause
Calendar (Another Form).

SUPREME COURT,
(*New York*) County.

(*THOMAS BECKET*),
Plaintiff,

against

(*JOHN GOULD*),
Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*William French*), being duly sworn, says that he is the attorney for the defendant herein. That this is an action brought

Affidavit In Opposition.

to recover of defendant \$2,000, with interest and protest fees claimed to be due on a promissory note.

That defendant expects to prove that the note is invalid, and was never intended to be a promissory note; that it was, in fact, a paper having an entirely different meaning from that alleged by the plaintiff. The defendant also expects to prove that there was no consideration for the giving of the alleged note, and that the alleged note was given solely by reason of the fraud of the plaintiff. That defendant will necessarily be obliged to call (*twelve*) witnesses; that the direct examination of these witnesses will alone occupy no less than (*one-half day*). That defendant's attorney will necessarily subject the plaintiff's witness to a severe and protracted cross-examination which will occupy not less than one hour. That this case cannot possibly be tried in less than six hours.

WHEREFORE, deponent prays that plaintiff's motion be denied.

(*WILLIAM FRENCH.*)

Sworn to before me, this
(*13th*) day of (*January*, 1907).

(*H. L. SMITH*),

Notary Public,

(*New York*) County.

Order Advancing.

FORM No. 209.

Order Placing Cause on the Special Calendar for the Trial of Short Causes.

At a Trial Term, Part II, of the Supreme Court of the State of New York, held at the County Court House in the Borough of Manhattan, City of New York, on the (15th) day of (*January*, 1905).

PRESENT:

Hon. (*Samuel Greenbaum*),
Justice.

(<i>MATTHEW L. FRANCIS</i>),	} Cal. No. (696), on Cal. No. 3.
Plaintiff,	
against	
(<i>MAX KENDRICK</i>),	
Defendant.	

The plaintiff having moved to place this cause upon the special calendar of this court for the trial of short causes and the said motion coming on to be heard, and on reading and filing the notice of motion, and proof of due service thereof, and the affidavits of (*Herman F. Stephens*), verified the (2nd) day of (*January*, 1900), and the affidavit of (*William French*), verified the (13th) day of (*January*, 1900), and the summons and the pleadings, herein, and after due deliberation this court being satisfied that the trial of this action will not occupy more than two hours, and no reason having been shown why the same should not be promptly tried.

Now, on motion of (*Herman F. Stephens*), attorney for the plaintiff herein, it is

ORDERED: That this case, numbered (696) on Trial Term Calendar No. 3, be and the same hereby is placed upon the special calendar of this court for the trial of short causes, in Part II. of the trial term of this court, and that the same be disposed of in its regular order thereon.

Enter,

(S. G.,)

J. S. C.

Opening Default In Opposing.

PASSING ON CALL OF CALENDAR.

Causes on the preferred calendar may be passed for absence of counsel in another court, or for any cause occurring since the case was put on the calendar, in the discretion of the judge.

FORM No. 210.

Notice of Motion to Open Default of the Defendant in Appearing in
Opposition to Motion to Short Cause.

SUPREME COURT,
(*New York*) County.

(*ALBERT LITTLE and*
PHILIP N. LITTLE,)
Plaintiffs,

vs.

(*THE NEW BREWING COM-*
PANY,) " Defendant

Sirs:

YOU WILL PLEASE TAKE NOTICE, that upon the affidavits of (*Charles Marks*), verified (*October 22, 1906*), and (*Carl Wilson*), verified on (*September 29, 1906*), hereunto annexed, and upon the pleadings and proceedings in this action, a motion will be made at Trial Term, Part II, of this court appointed to be held in and for the county of New York at the County Court House, (*Borough of Manhattan, in the City of New York*), on the (*28th*) day of (*November, 1906*), at 10:15 o'clock A. M. of that day, or as soon thereafter as counsel can be heard, for an order opening the default of the defendant in appearing in opposition to a motion to place the above-entitled cause upon the calendar of this court as a short cause and permitting the said motion to be heard as though then and there made, and for such other and further relief as to the court may seem just and proper in the premises.

Dated (*November 22, 1906*).

(*CHARLES JOHNSON*),
Attorney for defendant,
(*42 Broadway*),
(*New York.*)

To

Messrs. (*QUINN & DAVIS*),
Attorneys for plaintiffs.

DEFAULTS.

FORM No. 211.

Notice of Motion to Dismiss Complaint for Failure to Prosecute.
SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(<i>MATTHEW L. FRANCIS</i>),	}
Plaintiff,	
against	
(<i>MAX KENDRICK</i>),	
Defendant.	

Sir:

PLEASE TAKE NOTICE, that upon the affidavit of (*Benjamin H. David*), verified the (12th) day of (*November, 1906*), and on the pleadings and other proceedings had herein, the undersigned will move this court at a Special Term (*Part I.*), to be held at the County Court House, in the (*Borough of Manhattan, City of New York*) on the (20th) day of (*November, 1906*), at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order directing that this action be dismissed with costs, for the plaintiff's unreasonable neglect to proceed therein against said defendant, and for such other and further relief as may be just, with costs of this motion and action.

Dated (*November 12, 1906*).

Yours, etc.,
(*BUDD & DAVID*),
Attorneys for Defendant,
(*No. 12 Broadway*),
(*Manhattan Borough*),
(*New York City*).

To

(*L. H. CHARLES*), Esq.,
Attorney for Plaintiff,
(*270 Broadway*),
(*Borough of Manhattan*),
(*New York City*).

Affidavit.

FORM No. 212.

Affidavit on Motion to Dismiss Complaint for Want of Prosecution.

SUPREME COURT OF THE STATE OF NEW YORK,
County of (*New York*).

(MATTHEW L. FRANCIS,)	}
Plaintiff,	
against	
(MAX KENDRICK,)	
Defendant.	}

STATE OF NEW YORK, }
County of (*New York*) } ss.:

(*BENJAMIN H. DAVID*), being duly sworn, says: I am one of the attorneys for the defendant herein. This action is triable by jury and issue was joined herein on (*January 27th, 1904*). Said action has never been placed upon the trial term calendar of this court, and plaintiff has failed to bring the same to trial according to the course and practice of this court. Issues of a later date, to wit: as late as (*March 1st, 1905*), have been reached in their regular order upon said calendar and disposed of.

(BENJAMIN H. DAVID.)

Sworn to before me, this }
(12th) day of (*November, 1906*). }(H. S. NATHAN),
Notary Public,
(*New York*) County, No. (68).

Order.

FORM No. 213.

Order Dismissing Complaint for Want of Prosecution.

At a Special Term (*Part I.*) of the Supreme Court of the State of New York, held in and for the County of (*New York*), in the County Court House in said County on the (*20th*) day of (*November, 1906*).

PRESENT:

Hon. (*DAVID LEVENTRITT*),
Justice.

(*MATTHEW L. FRANCIS*),
Plaintiff,

against

(*MAX KENDRICK*),
Defendant.

On reading and filing the affidavit of (*Benjamin H. David*), and on the pleadings and proceedings had herein and after hearing (*Benjamin H. David*), of counsel for the defendant, in support of the motion and (*Louis H. Charles*), Esq., of counsel for plaintiff, in opposition thereto, and after due deliberation being had thereon,

NOW, on motion of (*Budd & David*), attorneys for the defendant, it is

ORDERED: That the motion of the defendant be and hereby is in all respects granted, (*with \$10 costs*), and that the plaintiff's complaint herein be and the same hereby is dismissed for want of prosecution, and that defendant have judgment accordingly with costs.

Enter,
(*D. L.*)
J. S. C.

Order Opening.

FORM No. 214.

Order Opening Default and Setting Aside Judgment Entered Thereon.

At a Special Term, (*Part I.*) of the Supreme Court of the State of New York, held in and for the County of (*New York*), at the County Court House in the (*Borough of Manhattan, City of New York*), on the (*13th*) day of (*May, 1907.*)

PRESENT:

Hon. (*JAMES A. BLANCHARD*),
Justice.

(*FRANK VERNON*),
Plaintiff;
- against
(*THOMAS PARSONS*),
Defendant.

A judgment having heretofore been entered in this action on the (*7th*) day of (*May, 1907*), in favor of the plaintiff and against the defendant by default for want of an answer, and a motion having been made by the defendant to open said default and set aside said judgment, and said motion having duly come on to be heard, now, on reading and filing the order to show cause, dated (*May 9, 1907*), and the affidavit of (*Thomas Parsons*), verified the (*9th*) day of (*May, 1907*), and the proposed verified answer of the defendant herein in support of said motion, and the affidavit of (*William Cohen*), verified the (*12th*) day of (*May, 1907*), in opposition thereto, and after hearing Mr. (*Ralph Carson*), of counsel for the plaintiff in support of said motion, and Mr. (*William Cohen*), of counsel for the defendant in opposition thereto, and due deliberation having been had, it is, on motion of (*Ralph Carson*), attorney for the defendant,

ORDERED, that upon payment by the defendant to plaintiff's attorney of \$25 costs, said motion be and the same hereby is in all respects granted, and the default of the defendant, (*Thomas Parsons*), in failing to serve an answer herein be opened, and it is further

Opening — Order To Show Cause.

ORDERED, that the judgment heretofore entered on the (7th) day of (May, 1907,) in favor of the plaintiff and against the defendant for the sum of (\$797.60,) be, and the same hereby is vacated and set aside; and it is further

ORDERED, that the defendant, (*Thomas Parsons*,) within (ten) days after the service of a copy of this order with a notice of entry, comply with the terms of this order, serve upon the plaintiff's attorney a copy of his answer herein, and in default thereof that said judgment continue in full force and effect.

Enter,

(*J. A. B.*.)

J. S. C.

FORM No. 215.

Order to Show Cause. Motion to Open Default.

SUPREME COURT,

(*New York*.) County.

(*FRANK VERNON*.)

Plaintiff,

against

(*THOMAS PARSONS*.)

Defendant.

Upon the annexed affidavit of (*Thomas Parsons*.) sworn to the (10th) day of (*May*, 1907,) and the proposed verified answer of (*Thomas Parsons*.) the defendant above named, and on all the proceedings had herein, let the plaintiff or his attorney show cause before the justice of this court, sitting at Special Term, (*Part I.*, *thereof*.) to be held at the County Court House in the (*Borough of Manhattan, City of New York*), on the (13th) day of (*May*, 1907,) at the opening of court on that day, or as soon thereafter as counsel can be heard, why an order should not be made, opening the default of the defendant and setting aside the judgment entered herein in favor of the plaintiff and against the defendant on the (6th) day of (*May*, 1907,) and why leave should not be granted to the defendant to serve an answer herein, and why

Opening — Affidavit.

such other and further relief should not be granted as may be just in the premises.

Pending the hearing and determination of this motion and the entry of order thereon, let all proceedings on the part of the plaintiff, his attorneys and agents and the sheriff of the county of (*New York*,) for the enforcement of the said judgment, be stayed, and sufficient cause therefor to me appearing, let service of a copy of this order, together with the annexed affidavit and proposed verified answer on the plaintiff's attorney on or before (*May 11, 1907*,) be sufficient.

Dated, (*New York, May 10, 1907*.)

(*JOHN W. GOFF*,)

Justice Supreme Court.

FORM No. 216.

Motion to Open Default — Affidavit.

SUPREME COURT,
(*New York*) County.

(*FRANK VERNON*,)
Plaintiff,

against

(*THOMAS PARSONS*,)
Defendant.

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*Thomas Parsons*,) being duly sworn, says that he is the defendant in the above entitled action; that the summons and verified complaint herein were served on him on the (20th) day of (*April, 1907*;) that on the (22^d) day of (*April, 1907*,) deponent (*was notified by telegraph that the warehouse of Calhoun, Parsons & Company, in the City of Chicago, of which firm deponent is a member, had been destroyed by fire, and that his presence was imperatively needed to look after the interests of said firm in connection with the adjustment and settlement of*

Opening — Affidavit.

said loss) and that deponent (*left for the City of Chicago on the 23d day of April and was compelled to remain in said city until the 8th day of May, 1907, for the purpose of securing an adjustment and settlement of the said loss*) and that, by reason of these facts and through inadvertence, he neglected to place the summons and complaint which had been served on him in the hands of his attorney until the (*9th*) day of (*May, 1907,*) which day, as he is advised by his said attorney, was later than the twenty days within which deponent was required by law to serve his answer.

Deponent further says that he has fully and fairly stated the facts of the case to (*Ralph Carson,*) his counsel herein, who resides at (*728 West End Avenue, Borough of Manhattan, City of New York,*) and that he has a good and substantial defense thereto upon the merits, as he is advised by his said counsel after such statement and verily believes.

Deponent further says that this action is brought to (*recover the sum of \$780, alleged to be due to the plaintiff from the defendant as a balance upon account for goods sold and delivered and services rendered at the special instance and request of defendant,*) but that deponent has a complete defense to said alleged claim, as he is advised, (*in a written accord and satisfaction had between the parties*) as more particularly appears by paragraphs (*III., IV. and V.*) of the proposed verified answer hereto attached; and that it is deponent's intention to defend this action in good faith.

Deponent therefore asks that his default for want of an answer be opened and that the judgment entered against him in favor of the plaintiff on the (*7th*) day of (*May, 1907,*) be vacated and set aside and that he be granted leave to serve a copy of the annexed verified answer on the plaintiff's attorney within (*ten*) days of an entry of an order upon this application, and that all proceedings on the part of the plaintiff for the enforcement of said judgment be stayed pending the hearing and determination of this application and the entry of an order thereon, and for such other and further relief as may be just in the premises.

(*THOMAS PARSONS.*)

Sworn to before me this (*9th*)

day of (*May, 1907.*)

(*FRANK BENDER,*)

Notary Public,

(*New York*) County. No. (*102.*)

FORM No. 217.

Order to Show Cause Why Default Should Not be Opened (Complaint Dismissed).

SUPREME COURT,
(*New York*) County.

(*SAMUEL SARD,*)

Plaintiff,

against

(*JOHN CROSBY et al.,*)

Defendants.

Upon the annexed affidavit, upon the pleadings herein, and all other papers and proceedings had in this action,

Let the defendants or their attorneys show cause before this court at Special Term, (*Part I.,*) thereof, at the County Court House, in the (*Borough of Manhattan, City of New York,*) on the (*18th*) day of (*December, 1906,*) at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be made vacating and setting aside the dismissal of the complaint and opening the default of the plaintiff herein, and why this case should not be restored to the calendar of this court for trial, and why the plaintiff should not have such other and further relief as to this court may seem just and proper in the premises.

In the meantime, and until the hearing and final determination of this motion and the entry of an order thereon, let all proceedings on the part of the defendants, their attorneys and agents and the sheriff of the county of (*New York*) be stayed.

Reasons appearing therefor, let service hereof this day before (*3 P. M.*) be deemed sufficient.

Dated, (*New York, December 17, 1906.*)

(*J. A. O'GORMAN,*)

Justice Supreme Court.

FORM No. 218.

Affidavit Used in Support of Motion.

SUPREME COURT,
(*New York*) County.

(SAMUEL SARD,) }
Plaintiff, }
against }

(JOHN CROSBY and JAMES BROWN,) }
Defendants. }

STATE OF NEW YORK, }
City and County of (*New York*), } ss.:

(HENRY FOOTE,) being duly sworn, deposes and says:

I am managing attorney for Messrs. (*Storms & Hoff*,) the attorneys for the plaintiff in the above entitled action.

This action was commenced by the plaintiff to recover of the defendants the sum of (\$9,734.66,) for * * *

(*Set forth nature of action.*)

After the defendants served their answer this case was regularly placed upon the calendar of this court, and appeared in its order on the (*Friday Call*) Calendar. It then appeared at Trial Term, Part (X) of this court, and was on such Day Calendar of Trial Term, Part (10) on the (12th and 13th) days of (*December, 1906*,) and on several days prior to that time. On the morning of the (12th) of (*December, 1906*.)

(*Here state facts why default should not have been taken with account of case appearing on the day calendar and its being sent to a part for trial.*)

I again stated these facts to Mr. (*Justice Leventritt*,) who presided in the part to which this cause had been sent for trial and he stated that in view of the fact that the case had been sent to him for trial, the case would have to go to trial, and owing to the fact that we could not proceed because * * *

(*State reasons.*)

this case was marked "dismissed."

I believe that this action has been brought in good faith, and plaintiff desires to prosecute the same in good faith, and I be-

Order Opening.

lieve from what I know of the facts that he has a good and meritorious cause of action against the defendants.

I make the pleadings in this case part of this affidavit, and beg leave to submit the same upon this motion. Up to the present time no judgment of dismissal has been entered, and I ask for an order vacating and setting aside said dismissal and opening the plaintiff's default, and restoring this case to the day calendar of this court. I also ask for an order to show cause, so that a stay of proceedings may be granted, that this motion may be heard before the entry of judgment, or the enforcement of any judgment which may be entered.

No previous application has been made for the relief herein asked.

(HENRY FOOTB.)

Sworn to before me, this (17th)

day of (December, 1906.)

(JAMES TAYLOR,)

(Commissioner of Deeds,)

(New York City.)

FORM No. 219.

Order Opening Default (Where Complaint Dismissed).

At a Special Term of the Supreme Court of New York, held at (Part I.) in the County Court House in the County of (New York,) on the (24th) day of (December, 1906.)

PRESENT:

Hon. (EDWARD E. McCALL,) Justice.

(SAMUEL SARD,)

Plaintiff,

against

(JOHN CROSBY et al.,)

Defendants.

The plaintiff herein having moved this court by an order to show cause granted by Hon. (James A. O'Gorman,) justice, returnable (December 18, 1906,) for an order vacating and setting

Order Opening.

aside the dismissal of the complaint, and opening the default of the plaintiff herein, and restoring this case to the calendar of this court for trial.

Now, on reading and filing said order to show cause, dated (*December 17, 1906,*) and the affidavits of (*Henry Foote,*) verified (*December 17, 1906,*) and the complaint and answer herein in support of said motion, and on reading and filing the affidavit of (*Edwin Thomas,*) verified (*December 17, 1906,*) and of (*John French,*) verified (*December 18, 1906,*) in opposition thereto, now after hearing (*Henry A. Foote,*) Esq., of counsel for plaintiff, in support of said motion, and (*Edwin Thomas,*) Esq., of counsel for defendants, in opposition thereto, and due deliberation having been had,

On motion of (*White & Rice,*) attorneys for the defendants, it is

ORDERED, that upon the payment of (*forty*) (\$40) dollars costs, within five days after service of a copy of this order with notice of entry, said motion be and the same hereby is in all respects granted, and

ORDERED, that the default taken against the plaintiff for failure to appear upon the call of this cause for trial, be and hereby is opened, and it is further

ORDERED, that the order heretofore made herein on the (*16th*) day of (*December, 1906,*) dismissing the complaint with costs, and proceedings founded thereon; be and the same hereby is vacated and set aside, and further

ORDERED, that this cause be restored to the (*Trial Term,*) calendar, (*No. 3,*) of this court and placed upon the next call calendar of said calendar (*No. 3,*) and the clerk is directed to set this cause down accordingly, and it is further

ORDERED, that in case of failure of the plaintiff to comply with the terms of this order, judgment may be entered dismissing the complaint herein, with the costs of the action and \$10 costs of this motion.

Enter,

(*E. E. McC.*)

J. S. C.

ADJOURNMENT OF TRIAL.

FORM No. 220.

Affidavit to Secure. Reason: Absence of Counsel.*

SUPREME COURT,
County of (*New York*),

(<i>JOHN JONES</i> ,)	}
Plaintiff,	
against	
(<i>JOHN DOE</i> ,)	
Defendant.	

STATE OF (*NEW YORK*), }
County of (*New York*), } ss.:

(*WILLIAM RICH*), being duly sworn, says that he is an attorney and counsellor-at-law and managing clerk in the office of (*Theodore Ryan*), the attorney for the (*plaintiff*) in the above-entitled action. That deponent is informed and believes that said (*Theodore Ryan*) expects to try this case when reached, and that he has prepared the case and is ready for trial.

Deponent further says that said (*Theodore Ryan*) left *New York* on *Monday morning last*, on an important business engagement at (*Dushore, Pennsylvania*), and has been absent from the *city of New York* ever since. That he was expected to return to his office to-day, but has not yet returned and deponent does not know positively whether or not he will return to-morrow. That, if the above cause is reached for trial on the (*20th*) instant, deponent asks that the same may be passed until *Monday* next to await the return of said (*Theodore Ryan*) to try the same. That there is no one else in the office who has sufficient knowledge of the case to enable him to try the same, and that the same cannot be tried on behalf of the plaintiff until said (*Theodore Ryan*) returns.

(*WILLIAM RICH*.)

Sworn to before me, this }
(*19th*) day of (*May*, 1907). }

(*WILLIAM REACH*),

Notary Public,

(*New York*) County (*No. (3)*).

* But see Rule VII, Trial Term Rules, First Dist.

Illness Of Party.

FORM No. 221.

Affidavit to Secure. Reason: Illness of Party.

NEW YORK SUPREME COURT,
(*New York*) County.

(*JOHN JONES*),
Plaintiff,

vs.

(*WILLIAM JAMES*).
Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM HENDERSON*), being duly sworn, deposes and says: That he is the attorney for the defendant (*William James*), in the above-entitled action, on information and belief derived from the affidavit of (*Dr. William Smith*) hereto annexed, that the defendant is now ill and confined to his bed with (*the grippe*), at his residence, (*No. 211 W. 48th street, New York City*), and that he is now unable to leave his house to testify in this case, and that it would be dangerous to his life to attend as a witness herein or now be examined at any other place.

To deponent's knowledge, defendant's evidence is necessary and material in support of his defense herein and no other person can give such testimony. That deponent is informed and verily believes that defendant will not be sufficiently well to leave his house or to testify herein inside of (*two*) weeks.

(*WILLIAM HENDERSON*.)

Sworn to before me, this }
(*11th*) day of (*March*, 1907). }

(*JOHN DANIELS*),
Notary Public,
(*New York*) County (*No. 236*).

Illness Of Party.

FORM No. 222.

Affidavit to Secure — Illness of Party.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i>),	}
Plaintiff,	
vs.	
(<i>WILLIAM JAMES</i> .)	
Defendant.	}

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM SMITH*), being duly sworn, deposes and says, that I am a physician duly and regularly licensed to practice medicine in the State of New York; that I visited (*William James*), at his home, (*211 W. 48th street, in the City of New York*), on the (*11th day of March, 1907*), as his physician, and know his condition to be serious; that he is now confined to his bed suffering from an attack of (*the gripe*), the same being accompanied with (*high temperature and weak heart*); that in my judgment as his physician it would be dangerous for the said (*William James*) to leave his house, and that he is unable to transact any business, or to attend as a witness and is unable to give testimony in this case; that in the opinion of deponent the said (*William James*) will not be able to leave his house for a period of (*two weeks*.)

(*WILLIAM SMITH*.)

Sworn to before me, this
(*11th*) day of (*March, 1907*).

(*JOHN DANIELS*),
Notary Public,
(*New York*) County (*No. 236*).

Engagement Of Counsel.

FORM No. 223.

Affidavit to Secure. Reason: Engagement of Counsel.

SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i>),	}
Plaintiff,	
against	
(<i>JOHN DOE</i>),	
Defendant.	

STATE OF (*NEW YORK*), }
County of (*New York*), } ss.:

(*WILLIAM RICH*), being duly sworn, deposes and says: I am an attorney and counsellor-at-law, with offices at (*No. 76 William street, Borough of Manhattan, City of New York*), and I am associated with (*Thomas Oaks*), who has been retained as counsel for the *defendant* in this action; that the said (*Oaks*) has prepared this action and is ready for trial, and expects to try the same when reached. That I am acquainted with all of said (*Oaks's*) professional engagements; that the said (*Oaks*) is now actually engaged, as counsel for the plaintiff, in the trial of the case of (*Williams*) against (*Reilly*), before (*Hon. Justice Seabury*), in the (*City Court of the City of New York, Part V.*) and that the said trial of (*Williams*) against (*Reilly*) will probably continue during all of (*Friday, May 20th, 1907*).

WHEREFORE, I respectfully request that the case of (*Jones*) against (*Doe*) be passed for the day.

(*WILLIAM RICH.*)

Sworn to before me, this }
(*20th*) day of (*May, 1907*). }

(*THEODORE UPSOM*),

Notary Public,

(*New York*) County (*No. (12)*).

SUBPŒNAS — NOTICE TO PRODUCE.

FORM No. 224.

Subpœna.

THE PEOPLE OF THE STATE OF NEW YORK,

To

(*WILLIAM RICH*).

GREETING:

WE COMMAND YOU, that all and singular business and excuses being laid aside, you and each of you appear and attend before one of the justices of our Supreme Court, at a Trial Term, (*Part XIV*) thereof to be held in and for the county of New York, at the County Court House, in the said county on the (6th) day of (*June*, 1904), at (10:15) o'clock in the forenoon, to testify and give evidence in a certain action now pending in the Supreme Court, then and there to be tried between (*John Jones*), plaintiff, and (*John Doe*), defendant, on the part of the (*plaintiff*); and for a failure to attend you will be deemed guilty of a contempt of court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit fifty dollars in addition thereto.

WITNESS, Honorable (*John W. Goff*),* one of the justices of our Supreme Court at the County Court House in the County of (*New York*), the (4th) day of (*June*), in the year one thousand nine hundred and (*seven*).

(*PETER J. DOOLING*),
Clerk.

(*WILLIAM REILLY*),
Attorney for (*plaintiff*),
(*No. 52 William Street*),

(SEAL.)

(*New York City*).

* In the First District insert name of justice sitting at Special Term, Part II.

It is safest practice to have the subpoena signed by the clerk and the seal of the court affixed.

FORM No. 225.

Subpoena Duces Tecum.

THE PEOPLE OF THE STATE OF NEW YORK,
To

(WILLIAM RICH), Esq.,

GREETING:

WE COMMAND YOU, that all the business and excuses being laid aside you appear and attend before one of the justices of our Supreme Court, at a Trial Term, (*Part XIV*) thereof, to be held in and for the county of New York, at the County Court House in said county, on the (6th) day of (*June, 1904*), at (10:15) o'clock in the (*fore*)noon, to testify and give evidence in a certain action now pending undetermined in the said court between (*John Jones*), plaintiff, and (*John Doe*), defendant, on the part of the (*plaintiff*), and that you bring with you, and produce at the time and place aforesaid, a certain (*agreement made by John Doe, as party of the first part, and William Rich, as party of the second part, bearing date January 12th, 1904, relating to the distribution of profits arising out of the sale of certain real estate therein mentioned*), now in your custody, and all other deeds, evidences and writings which you have in your custody or power, concerning the premises. And for a failure to attend, you will be deemed guilty of a contempt of court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit fifty dollars in addition thereto.

WITNESS, (*Hon. Charles H. Truax*),* one of the justices of our said Supreme Court, at the County Court House, in said county of New York on the (12th) day of (*June, 1907*).

(PETER J. DOOLING),
Clerk.

(WILLIAM REILLY),

Plaintiff's Attorney,

(*No. 52 William Street*),

(SEAL.)

(*New York City*).

* In the First District insert name of judge sitting at Special Term, Part II.

In the case of a corporation a subpoena *duces tecum* should be directed to the president or the officer in charge of the books or papers.

To Testify — Before Referee.

FORM No. 226.

Subpœna to Attend Before Referee.

SUPREME COURT,
(*New York*) County.

(<i>COMMERCE NATIONAL BANK</i>),	}
Plaintiff,	
against	
(<i>JOHN W. McKEE</i>) and others,	
Defendants.	}

By virtue of an order made in the above action by the Special Term of the Supreme Court, Special Term, (*Part I., thereof*), entered herein on the (*3rd*) day of (*October*, 1906, I, *Edward E. McCall*), the referee appointed in this action, do hereby summon you to appear at my office No. (*346 Broadway, in the Borough of Manhattan, City of New York*) on the (*7th*) day of (*October*, 1906), at (*eleven*) o'clock in the (*fore*)noon to attend a hearing of the matters in said action referred to me as such referee, pursuant to said order. And hereof fail not at your peril.

Dated (*October 3, 1906*).

(*EDWARD E. McCALL*),

Referee.

To (*William J. Kimball*).

Affidavit Of Service.

FORM No. 227.

Affidavit of Service of Subpoena.

SUPREME COURT,
(*New York*) County.

(HENRY FOLMER,)	}
Plaintiff,	
against	
(SAMUEL SEELEY,)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JAMES SINCOE*), being duly sworn, says that on the (*26th*) day of (*February*, 1907), he served the annexed subpoena personally on (*Edward Fairchild*), the person therein named as witness, by then and there exhibiting to him the said original subpoena, and delivering to him a copy thereof and paying to him, at the same time and place (*one dollar and thirty cents*), as and for his fees for traveling from (*29 West 155th St., Borough of Manhattan, City of New York*), which then was the residence of the said (*Edward Fairchild*), to the place mentioned in said subpoena, and return thereupon, and for one day's attendance as such witness.

(JAMES SINCOE.)

Sworn to before me, this }
(*26th*) day of (*February*, 1907.) }

(JOHN JONES),
Notary Public, No. (16).

(N. Y.) County.

Affidavit Of Service.

FORM No. 228.

Affidavit of Service of Subpoena in Case of Several Witnesses.

SUPREME COURT,
(*New York*) County.

(*HENRY FOLMER*),
Plaintiff,
against
(*SAMUEL SEELEY*),
Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*JAMES SINCOE*), being duly sworn, says that the witnesses after named, respectively reside at and were served at the places hereinafter so designated. That deponent, at the times and places below set forth, served the annexed subpoenas personally upon each of the witnesses below named, by exhibiting said original subpoena to each of such witnesses and delivering to him or her a copy thereof, and paying to each of them the sum set opposite his name.

On	Residence,	Place Service,	Date,	Am't Paid.
(<i>Thomas Short</i>),	(34 <i>... Ave.</i> , <i>Troy, N. Y.</i>)	(220 <i>Broadway</i> , <i>New York, N. Y.</i>)	(<i>Feb. 26, 1907</i>)	\$13)
(<i>Fannie Wilks</i>),	(23 <i>E. 23rd St.</i> , <i>New York, N. Y.</i>)	(521 <i>8th Ave.</i> , <i>New York, N. Y.</i>)	(<i>Feb. 28, 1907</i>)	.50)
(<i>Gabriel Johnson</i>),	(700 <i>5th Ave.</i> , <i>New York, N. Y.</i>)	(700 <i>5th Ave.</i> , <i>New York, N. Y.</i>)	(<i>Feb. 15, 1907</i>)	.72)

as and for the traveling fees of such witness, respectively, from the residence of each of said witnesses, to the place mentioned in the subpoenas and return therefrom, and one day's attendance as such witness.

(*JAMES SINCOE*.)

Sworn to before me this (1st) }
day of (*March 1907*.) }

(*JOHN WINTHROP*),
Notary Public (*New York*) County.

Form And Note.

FORM No. 229.

Notice to Produce.*

(CITY COURT OF THE CITY OF NEW YORK).

(JOHN JONES,)

Plaintiff,

against

(JOHN DOE,)

Defendant.

Sirs:

PLEASE TAKE NOTICE, that you are required to produce on trial of the above-entitled action, the following described papers:

I. (*A certain note dated on or about September 29th, 1903, for fifty-three and 50/100 dollars (\$53.50), payable to John Doe, or bearer, five (5) months after date, made by Mary Doe and indorsed by defendant.*)

II. (*Notice of protest received by you on or about April 26th, 1904, concerning a certain note dated September 29th, 1903, payable to John Doe, or bearer, for fifty-five dollars (\$55.00), due five (5) months after date, made by Mary Doe and indorsed by defendant.*)

III. (*A certain letter dated April 26th, 1904, and addressed to defendant at No. 1 Monroe street, New York city, advising him of the protest of the note mentioned in the foregoing paragraph, asking defendant as indorser to pay same, and signed by William Reilly.*)

IV. All other documents, notes, papers, books, letters and writings whatsoever in your possession or control containing any entry, memorandum or other matter in any way relating to the above cause.

* Always annex affidavit of service immediately upon effecting service unless an admission of due and timely service is obtained.

Reminder For Drawing.

In case of your failure to produce any of the foregoing, secondary evidence of the contents of the same will be offered.

Dated, *New York, April 29, 1904.*

Yours, etc.,

(*WILLIAM REILLY,*)

Attorney for (*Plaintiff,*)

(*27 Pine Street,*)

(*Borough Manhattan,*)

(*City of New York.*)

To

(*EZRA WILLIAMS & SONS,*) Esqs.,

Attorneys for (*Defendant,*)

(*15 William Street,*)

(*New York City.*)

Reminder for Drawing Notice to Produce.

(*Number of, dates, from whom, to whom or other description.*)

Accounts, Affidavits, Agreements, Bills, Bills of exchange, Books, Bonds, Certificates, Checks, Circular, Contracts, Deeds, Declaration and charter, Executions, Forms, Incorporation papers, Letters, Letter books, Manuscripts, Memorandum, Mortgages, Notes, Note books, Opinions, Pamphlets, Prospectus, Papers, Promissory notes, Receipts, Telegrams, Transcripts, Warrants, Writings.

MOTIONS.

FORM No. 230.

Notice of Motion.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i>),	}
Plaintiff,	
against	
(<i>JOHN DOE</i>),	
Defendant.	

Sir:

TAKE NOTICE, that upon the affidavit of (*John Doe*), verified the (12th) day of (*May*, 1906), a copy of which is hereto annexed, the undersigned will move this court at a Special Term (*Part I.*) thereof to be held at the County Court House, in the (*Borough of Manhattan*), (*City of New York*), on the (17th) day of (*May*, 1906), at the opening of the court on that day, or as soon thereafter as counsel can be heard for an order (*requiring the complaint herein to be made more definite and certain by stating at what time the agreement mentioned therein was made*); and for such other and further relief as to the court may seem just and proper, and for the costs of this motion.

Dated (*May 12th*, 1906).

(*EZRA WILLIAMS*),
Attorney for Defendant,
(*No. 15 William Street*),
(*Borough of Manhattan*),
(*City of New York*).

To

(*WILLIAM REILLY*), Esq.,
Attorney for Plaintiff,
(*No. 27 Pine Street*),
(*New York City*).

Order To Show Cause.

FORM No. 231.

Order to Show Cause.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JOHN DOE,</i>)	} Plaintiff,
against	
(<i>RICHARD ROE,</i>)	
Defendant.	

On reading and filing the summons and complaint in this action and the affidavit of (*John Doe*), the plaintiff herein, verified the (31st) day of (*August, 1907*) let the defendant above named or his attorney show cause before this court at a Special Term (*Part I.*), to be held at the County Court House, in the (*Borough of Manhattan, City of New York*), on the (2nd) day of (*September, 1907*), at (10:30) o'clock in the (*fore*)noon, or as soon thereafter as counsel can be heard, why an order should not be made appointing a (*receiver of all the property and assets of the co-partnership of Doe & Roe, including the Hotel Richard, conducted by the said co-partnership*), in ~~the~~ (*Borough of Manhattan, City of New York*), with the usual directions, and that the plaintiff have such further or other relief as to this court may seem just and proper. Service of this order upon the defendant (*or defendant's attorney*) on or before the (1st) day of (*September, 1904*), shall be sufficient, and in the meantime and until the hearing and determination of this motion and the entry of an order thereon, let all proceedings on the part of defendants be stayed.

Dated (~~August~~ 31, 1904).

(*JOHN J. WILLIAMS*),

Justice of the Supreme Court.

Notice Of Settlement Of Order.

FORM No. 232.

Notice of Settlement.

Sir:

PLEASE TAKE NOTICE, that the within order will be presented to Mr. Justice (*Colfax*), at his Chambers, in the County Court House (*Borough of Manhattan, City of New York*), on the (*12th*) day of (*July, 1906*), at (*10:30*) o'clock (*A. M.*) for settlement and signature.

Dated (*July 10, 1906*).

'JOHN WILLIAMSON),

(*Plaintiff's*) Attorney.

Office and P. O. Address,

(*1 Wall Street*),

(*Borough of Manhattan*),

(*New York City*).

To

(*ROBERT JENSEN*), Esq.,

(*Defendant's*) Attorney.

(*309 Broadway*),

(*New York City*).

Caption For Court Order.

FORM No. 233.

If the order is a court order, the caption should be as follows:

At a Special Term, (*Part I.*) of the (*Supreme Court of the State of New York*), held in and for the County of (*New York*), at the (*County Court House*), in the (*Borough of Manhattan, City of New York*), in said county, on the (*1st*) day of (*September, 1907*).

PRESENT:

Hon. (*JOHN J. WILLIAMS*),
Justice.

(*JOHN DOE*),

Plaintiff,

against

(*RICHARD ROE*),

Defendant.

 Caption For Judge's Order.

FORM No. 234.

If the order is a judge's order, the caption should be as follows:

NEW YORK SUPREME COURT,
(*New York*) County.

(*JOHN DOE,*)

Plaintiff,

against

(*RICHARD ROE,*)

Defendant.

FORM No. 235.

Notice of Application for Resettlement of Order.

SUPREME COURT,
(*New York*) County.

(*ALFRED D. ZIEGER.*)

Plaintiff,

against

(*CHARLES E. GARRISON*) and
another,

Defendants.

Sir:

PLEASE TAKE NOTICE that upon the annexed affidavit of (*Julius Rosen*) verified the (*17th*) day of (*February, 1903,*) application will be made to the Hon. (*Charles H. Truax,*) a Justice of this Court at (*a Special Term, Part VI,*) thereof, to be held at the New York County Court House, in the (*City of New York, Borough of Manhattan,*) on the (*26th*) day of (*February, 1903,*)

 Notice Of Entry Of Order.

at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order resettling the order entered herein on the (10th) day of (*February, 1903,*) by (*reciting in the said order the affidavits of Julius Rosen, verified the 30th day of January, 1903, and the affidavit of Alfred D. Zieger, verified the 3d day of February, 1903, and the copies of affidavits of Howard Thornton, verified the 8th day of January, 1903, and of Charles E. Garrison, verified the 8th day of January, 1903,*) all of which were offered on said motion on behalf of the plaintiff, and for such other and further relief as may be meet and just.

Dated (*New York, February 17, 1903.*)

Yours, etc.,

(*JULIUS ROSEN,*)

Attorney for (*Plaintiff,*)

(*No. 21 William Street,*

New York City.)

To (*HOWARD THORNTON,*) Esq.,

Attorney for Defendant,

(*43 Third Street,*

Newburg, N. Y.)

 FORM No. 236.

Notice of Entry.

Sir:

PLEASE TAKE NOTICE, that the within is a true copy of (*an order*), duly made and entered in the within entitled (*action*), and filed in the office of the clerk of (*the County of New York*), on the (*6th*) day of (*July*), 1907.

New York (*July 6th*), 1907.

Yours, etc.,

(*ROBERT JENSEN,*)

Attorney for (*Plaintiff*),

Office and P. O. Address,

(*27 Pine Street*),

(*Borough of Manhattan*),

(*New York City*).

To

(*THEODORE WILLIAMS*), Esq.,

Attorney for (*Defendant*),

(*11 Wall Street, New York*).

Notice Of Exception To.

FORM No. 237.

Notice of Exception to Sureties.

NEW YORK SUPREME COURT,
(*New York*) County.

(*JAMES TURNER,*)
Plaintiff.

against

(*BENNETT FRANKLIN,*)
Defendant.

Sir:

PLEASE TAKE NOTICE that the plaintiff excepts to the sufficiency of the sureties in the bond filed herein on the (*11th*) day of (*July*, 1907.)

Dated (*New York, July 12, 1907.*)

Yours, etc.,

(*JAMES COLE,*)
Attorney for (*Plaintiff,*)
Office and P. O. Address,
(*27 Pine Street,*)
(*Borough of Manhattan,*)
(*New York City.*)

To

(*JOHN DOLL,*)
Attorney for (*Defendant.*)

Notice Of Justification.

FORM No. 238.

Notice of Justification.

NEW YORK SUPREME COURT,
(*New York*) County.

(<i>JOHN JONES</i> ,)	}
Plaintiff,	
against	
(<i>JOHN DOE</i> ,)	
Defendant.	

Sirs:

PLEASE TAKE NOTICE, that the sureties on the plaintiff's undertaking on replevin herein will justify before one of the justices of this court at a Special Term (*Part Two*) thereof, to be held in the County Court House in the (*Borough of Manhattan, City of New York*), on the (*29th*) day of (*July, 1907*), at ten o'clock A. M.

Dated (*New York, July 24, 1907*).

Yours, etc.,

(*WILLIAM FRENCH*),

Attorney for Plaintiff,

Office and P. O. Address,

(*No. 11 Wall Street*),

(*Borough of Manhattan*),

(*City of New York*).

To

Messrs. (*WILSON & DOWNING*),

Defendant's Attorneys,

(*No. 32 Broadway*),

(*New York City*).

DECISIONS AND JUDGMENTS ON DEMURRER.

NOTE.—Where demurrers are interposed by different defendants, the findings and conclusions should be embraced in one decision and one judgment and not in separate decisions and judgments. (117 *App. Div.* 643.)

If you represent party whose demurrer is overruled, see that the interlocutory judgment contains leave to withdraw demurrer and plead over. (110 *App. Div.* 133; 118 *App. Div.* 658.)

FORM No. 239.

Decision Overruling Demurrer (Granting Leave to Plead Over).

NEW YORK SUPREME COURT,
(*New York*) County.

(JONATHAN ROBERTS,)	}
Plaintiff,	
against	
(ALEXANDER DUMONT,)	
Defendant.	

The issue of law raised by the demurrer of the defendant to the complaint, coming on to be heard by the court at Special Term, (*Part V.*) thereof, held by the undersigned at the County Court House in the (*Borough of Manhattan, City of New York,*) and after hearing (*Charles F. Brown,*) Esq., of counsel for the defendant in support of the demurrer, and (*Roland Ransom,*) Esq., of counsel for the plaintiff in opposition thereto, and due deliberation having been had thereon, I decide and find as follows:

CONCLUSIONS OF LAW.

I. That the said complaint states facts sufficient to constitute a cause of action.

II. That the plaintiff is entitled to an interlocutory judgment overruling said demurrer, with costs, to be taxed by the clerk,

 Overruling Demurrer — To Complaint.

but with leave to the defendant to plead anew upon payment of said costs, within twenty days after due service of said judgment, with notice of entry thereof upon the defendant's attorneys, and in default thereof plaintiff is entitled to a final judgment herein for the relief demanded in the complaint.

III. Judgment is hereby directed accordingly.

Dated, (*July 16, 1907.*)

(*HENRY A. GILDERSLEEVE,*)

Justice of the Supreme Court.

Note.— Where an order of the Appellate Division, affirming an interlocutory judgment overruling a demurrer to the complaint, grants leave to plead over conditionally, the affirmance of the order by the Court of Appeals carries with it an affirmance of such leave, and express permission by that court to withdraw the demurrer and interpose an answer is unnecessary.

The party may answer upon complying with the terms, counting the time from the filing of the remittitur. (*Cassidy v. Sauer*, 188 N. Y., p. 7, Memo.)

 FORM No. 240.

Interlocutory Judgment Overruling Demurrer to Complaint.

SUPREME COURT,

(*New York*) County.

(*HARRY SUMMER,*)

Plaintiff,

against

(*THE ASSOCIATED PRINTERS,*)

Defendant.

This cause having been regularly brought on for trial upon the issues of law formed by the plaintiff's complaint and the defendant's demurrer thereto, at a Special Term, (*Part IV.*) of the Supreme Court, County of (*New York,*) held at the County Court House in the (*Borough of Manhattan, City of New York,*)

Sustaining Demurrer — To Complaint.

before Hon. (*Mitchell L. Erlanger*,) one of the justices of said court, on the (4th) day of (*April*, 1907,) and said court having heard Mr. (*John Henry Durand*) of counsel for defendant, and Mr. (*William Wilson Warren*) of counsel for the plaintiff, and having, after due deliberation, duly made and filed his decision directing an interlocutory judgment to be entered herein, overruling said demurrer, with costs, with leave to the defendant to plead anew on payment of said costs within twenty days;

NOW, on motion of (*Henry Winfield*,) attorney for the plaintiff herein it is

ORDERED AND ADJUDGED, that the defendant's demurrer to the complaint herein be overruled with costs of (*thirty-six and 85/100*) dollars (\$36.85,) as taxed, with leave to said defendant to plead anew upon payment of said costs within twenty days after due service of a copy of this interlocutory judgment, with notice of entry, upon the defendant's attorneys, and in default thereof the plaintiff shall have final judgment herein for the relief demanded in the complaint.

Judgment entered (*April 10*, 1907.)

(*PETER J. DOOLING*,)

Clerk.

FORM No. 241.

Interlocutory Judgment Sustaining Demurrer to Complaint.

NEW YORK SUPREME COURT,

(*New York*) County.

(*JAMES SLATER*,)

Plaintiff,

against

(*LUDWIG VON BARWIG*,)

Defendant.

The issue of law herein raised by the demurrer of the defendant to plaintiff's complaint, having been regularly brought on for trial before Mr. Justice Greenbaum, at Special Term (*Part V.*) of the Supreme Court, (*New York*) County, held at the County

 Overruling Demurrer — To Counterclaim.

Court House in the (*Borough of Manhattan, City of New York*,) on the (10th) day of (*March, 1907*,) and the court having heard Mr. (*Edward Barlow*) of counsel for the defendant, and Mr. (*Mortimer Bond*) of counsel for the plaintiff, and having, after due deliberation, made and filed its decision sustaining said demurrer, and granting leave to the plaintiff to serve an amended complaint upon payment of costs within twenty days, and directing that an interlocutory judgment be entered accordingly;

NOW, on motion of (*Mortimer Bond*,) attorney for defendant it is

ORDERED AND ADJUDGED, that the demurrer of the defendant to the complaint herein be and hereby is sustained, with (*thirty-six and 85/100*) dollars (\$36.85) costs as taxed; further

ORDERED AND ADJUDGED, that the plaintiff have leave to serve an amended complaint herein on payment of said costs within twenty days after due service of a copy of this judgment, with notice of entry thereof upon the attorneys for the plaintiff, and in default thereof that the defendant have final judgment dismissing the complaint herein on the merits, with costs.

Judgment entered the (18th) day of (*March, 1907*.)

(*PETER J. DOOLING*,)

Clerk.

 FORM No. 242.

Decision Overruling Demurrer to Counterclaim.

SUPREME COURT,
(*New York*) County.

(*ALBERT LUSK and JAMES BOCK*,)

Plaintiffs,

against

(*THE GEORGETOWN BREWING COMPANY*,)

Defendant.

The plaintiffs having demurred to the counterclaim set forth in the answer of the defendant, on the grounds that said counter-

Overruling Demurrer — To Counterclaim.

claim does not state facts sufficient to constitute a cause of action, and is not of the character specified in section 501 of the Code of Civil Procedure, and the matter having duly come on before me for hearing on the (13th) day of (*November*, 1906,) and the plaintiffs having appeared by (*Charles Wood*,) Esq., of counsel, and the defendant by (*William Dale*,) Esq., of counsel, and the issue of law raised by said demurrer having been argued and submitted, and due deliberation having been had thereon; and upon reading and filing the complaint, answer and demurrer herein, I now make and file the following decision and conclusions of law.

I. The matters referred to in the counterclaim form a part of the transactions or contract set forth in the complaint. The said counterclaim states facts sufficient to constitute a cause of action and comes within the provisions of section 501 of the Code of Civil Procedure.

II. The defendant is entitled to interlocutory judgment, overruling said demurrer, with costs, which are hereby awarded defendant to be paid by plaintiffs, but with leave to plaintiffs upon payment of costs to reply within twenty days after service upon their attorneys of the decision and interlocutory judgment herein.

Let interlocutory judgment be entered in accordance herewith.

Dated, (*November 21*, 1906.)

(*JOSEPH E. NEWBURGER*,)

Justice Supreme Court.

Overruling Demurrer — To Counterclaim.

FORM No. 243.

Interlocutory Judgment Overruling Demurrer to Counterclaim.
NEW YORK SUPREME COURT,
(*New York*) County.

(ALBERT LUSK and JAMES BOCK,)

Plaintiffs,

against

(THE GEORGETOWN BREWING COMPANY,)

Defendant.

The (*plaintiffs*) having demurred to the (*counterclaim set up in the answer of defendant*), and the issue of law thereby raised having duly come on for trial on the (13th) day of (*November*, 1906,) in Special Term, (*Part IV.*), before Mr. Justice (*Joseph E. Newburger*), and the plaintiffs having appeared by (*Charles Wood*), Esq., of counsel, and the defendant by (*William Dale*), Esq., of counsel, and the matter having been duly heard, and the court having made and filed its decision in writing, dated (*November 21*, 1906,) directing interlocutory judgment to be entered to the following effect; and defendant's costs having been adjusted at \$35.12;

NOW, on motion of (*Holt & Dale*), attorneys for (*defendant*), it is

ADJUDGED AND DECREED, that the demurrer interposed by (*plaintiffs*) to the (*counterclaim set forth in the answer of defendant*), be and the same hereby is overruled and that (*defendant*) recover of (*plaintiffs*) the sum of (*thirty-five 12/100*) dollars (\$35.12), (*its*) costs as taxed by the clerk; and it is further

ADJUDGED AND DECREED, that upon payment of said costs, (*plaintiffs*) have leave to serve a (*reply*) within twenty days after service upon their attorneys of a copy of the decision and interlocutory judgment herein, and in case of failure of the plaintiff to comply with the terms hereby imposed and to serve his reply as herein directed final judgment shall be entered in favor of the defendant and against the plaintiff for the amount demanded in the counterclaim.

Judgment, (*December 3*, 1906.)

(PETER J. DOOLING,)

Clerk.

FORM No. 244.

Interlocutory Judgment, Sustaining Demurrer to Separate Defense.
(CITY COURT OF THE CITY OF NEW YORK.)

(JAMES ROOT,)

Plaintiff,

against

(THE AMERICAN COMPANY,)

Defendant.

This cause, having been regularly brought on for trial upon the issues of law framed by the defendant's answer and the plaintiff's demurrer thereto at a Special Term of this court, held by the Hon. (*Theodore F. Hascall*,) who, having heard the parties by their counsel, and after due deliberation, has duly made and filed his decision in writing sustaining the said demurrer and directing judgment to that effect to be entered herein, with costs, and the costs of said demurrer having been taxed by the clerk of this court at the sum of (*thirty-six*) dollars (\$36); now, upon motion of (*Green & Green*,) attorneys for the plaintiff, it is adjudged that the plaintiff's demurrer to the further separate and distinct defense set forth in the answer of the defendant on the ground that it is insufficient in law upon the face thereof be, and the same hereby is sustained, and said defense is hereby dismissed with (*thirty-six*) dollars (\$36) costs to said plaintiff; that said costs be included in the final judgment, if rendered in favor of plaintiff, and offset if final judgment be rendered in favor of defendant.

(THOMAS F. SMITH,)

Clerk.

Dated, (*April 10, 1907.*)

FORM No. 245.

Interlocutory Judgment Sustaining Demurrer to Counterclaim.

NEW YORK SUPREME COURT,
(*New York*) County.

(*JOHN WILLIAMS,*)

Plaintiff.

against

(*THE AMERICAN SHIRT COMPANY,*)

Defendant.

This cause, having been regularly brought on for trial upon the issues of law framed by the defendant's answer and the plaintiff's demurrer thereto at Special Term (*Part IV.*) of this court, held by the Hon. (*David Leventritt,*) who, having heard the parties by their counsel, and after due deliberation, has duly made and filed his decision in writing sustaining the said demurrer and directing judgment to that effect to be entered herein, with costs, and the costs of said demurrer having been taxed by the clerk of this court at the sum of (*thirty-six*) dollars (\$36); now, upon motion of (*Budd & Budd,*) attorneys for the plaintiff it is adjudged that the plaintiff's demurrer to the counterclaim set forth in the answer of the defendant on the ground that said counterclaim does not state facts sufficient to constitute a cause of action, be and the same hereby is sustained, and said counterclaim is hereby dismissed with (*thirty-six*) dollars (\$36) costs to said plaintiff; that said costs be included in the final judgment, if rendered in favor of plaintiff, and offset if final judgment be rendered in favor of defendant.

Dated, (*April 15, 1907.*)

(*PETER J. DOOLING,*)

Clerk.

Note.— The last clause in forms No. 244 and No. 245 is sustained in *Cassavoy v. Pattison*, 101 *App. Div.* 128, and in *Frey v. Barnaby*, 113 *App. Div.* 912, but in the Fourth Department, the last clause should read "and plaintiff have execution, there-

Sustaining Demurrer To Counterclaim — Costs On.

fore, as provided in sections 3232, 3233 and 779 of the Code of Civil Procedure.”

In the author's opinion the *Cassavoy* and *Frey* cases are unsound, and the opinion of the Fourth Department is approved, and the party should be entitled to collect costs as motion costs are collected, and the judgment in all cases should provide as above set forth for the Fourth Department. (*Biglow v. Drummond*, 109 App. Div. 132.) Perhaps a motion can be made to sever the actions, and then final judgment can be entered and general execution issued and thus an appeal obtained to the Court of Appeals before the final termination of all the issues.

ALLOWANCE TO ATTORNEY.

FORM No. 246.

Notice of Motion for Allowance.

SUPREME COURT,
(*New York*) County.

(*GERMAN TRUST COMPANY, as
Substituted Trustee of the Trusts cre-
ated by the Last Will and Testament
of WILLIAM FRENCH, deceased,*)

Plaintiff,

against

(*ROBERT WILSON and others,*)
Defendants.

Sirs:

PLEASE TAKE NOTICE that on the annexed affidavit of (*Francis Ackerman*) sworn to the (26th) day of (*July, 1907,*) and on the pleadings and all papers and proceedings herein, I will move this Court at a Special Term (*Part I*) thereof, to be held at the County Court House, in the (*Borough of Manhattan, City of New York*) on the (31st) day of (*July, 1907,*) at 10:30 o'clock A. M., or as soon thereafter as counsel can be heard, for an additional allowance as guardian *ad litem* and for such other and further relief as may be just and proper.

Dated (*New York, July 25th, 1907.*)

(*FRANCIS ACKERMAN,*)

Guardian ad litem for (*ROBERT and JANE
WILSON,*)

Defendants,

Office and Post-office Address,

(*3 Broadway,*)

(*Manhattan, New York City.*)

To (*THOMAS TITCOMB,*) Esq.,
Attorney for (*Plaintiff,*)

Affidavit.

FORM No. 247.

Affidavit for Allowance.

SUPREME COURT,
(New York) County.

(GERMAN TRUST COMPANY, as
Substituted Trustee of the Trusts
created by the Last Will and Testa-
ment of WILLIAM FRENCH,
deceased,)

Plaintiff,

against

(ROBERT WILSON and others,)
Defendants.

STATE OF NEW YORK, }
County of (New York,) } ss.::

(FRANCIS ACKERMAN,) being duly sworn, deposes and says: that he is an attorney at law having his office at (No. 3 Broadway in the Borough of Manhattan, City of New York.)

That he is the guardian ad litem of (two) of the infant defendants in the above entitled action, namely (ROBERT WILSON and JAMES WILSON.)

That the action was brought to (partition certain real estate situated in the City of New York and left by Robert Wilson). That the action was begun in the month of (January, 1906,) and has proceeded to judgment and (a sale of the premises has been had by the referee in partition, the premises being sold for (300,000)). The amount for distribution under the final judgment will be in the neighborhood of (\$200,000) in which sum deponent's (infants) have a vested interest of (\$30,000.00).

That in connection with his duties as guardian ad litem (for said infants, deponent advised himself of the rights of his wards; had several conversations with plaintiff's attorneys, examined the wills of Robert Wilson, Mary Wilson and William French, the last mentioned will being the will under which said infant defendants derive their interest; examined carefully the complaint and prepared the usual infant's answer. He also attended upon

Affidavit.

the reference upon title; he also filed exceptions to the referee's report, which exceptions were sustained by the Court, the claim of a defendant that a legacy of \$5,000 should be charged upon the real estate of William French being disallowed by the Court; also examined carefully all the papers served upon him in the suit, including the application for reference; referee's report; motion to substitute new parties; motion to confirm referee's report and interlocutory judgment; and he also examined carefully the law as to when general legacies are chargeable upon the real estate.)

Deponent further says that his services in this matter were not the ordinary routine services of a guardian ad litem, but were arduous and included, as above stated, appearances in Court and examination of law

In view of the amount involved, deponent believes that the sum of (\$250) is a reasonable allowance in addition to costs for the services performed by him and he therefore asks for such additional allowance.

(FRANCIS ACKERMAN.)

Sworn to before me this (26th) day }
of (July, 1907). }

(ARTHUR PEARSON,)

Notary Public,

(New York) County.

Affidavit.

FORM No. 248.

Affidavit for Allowance.

SUPREME COURT,
(New York) County.

(GERMAN TRUST COMPANY, as
Substituted Trustee of the Trusts
Created by the Last Will and Tes-
tament of WILLIAM FRENCH,
Deceased,)

Plaintiff,

vs.

(ROBERT WILSON and Others,)
Defendants.

STATE OF NEW YORK, }
County of (New York,) } ss.:

(Charles W. Ralston,) being duly sworn, deposes and says; that he is an attorney-at-law and one of the firm of (Ralston & Rice,) having an office at (32 Liberty street, Borough of Manhattan, New York City;) that the said firm represents in this action the defendant (Walter Johnson and did represent his wife, Sarah, until the day of her death.) This action was brought to (partition certain real estate situated in the city of New York and left by Robert Wilson.) The action was begun in (January, 1906,) and said firm appeared on (February 1, 1906,) for the above-named defendants. That in many respects the services rendered in this action were not ordinary routine services. That various motions had to be made and argued and various lengthy consultations had and efforts made to obtain adjournment of sale, and that there were many questions of law involved. That deponent's firm was engaged substantially (forty (40) days) in work on this suit. That (prior to February 1st said firm examined the summons and complaint herein, and the will of Robert Wilson, and questions of law arising therefrom. That on February 1st we drew the notice of appearance for both defendants and served the same, and on July 17, 1907, we received and examined a notice of motion for the reference returnable July 23d.) On August 9th

Affidavit.

a copy of the order appointing the referee and notice of entry were served upon us and examined. We received a notice of hearing before the referee for August 28th, at 10:30 A. M. On the 28th of August we attended the same. The hearing was adjourned to September 6th, and again adjourned to September 7th, and again adjourned to the 11th of September. On the 11th of September we attended the hearing and the same was closed. On November 12th we received and examined a copy of the referee's report and notice of filing. On November 20th we received notice of exceptions to the report and examined the same. On November 23d we received notice of motion for judgment returnable on November 28th. On November 21st one of the defendants Mary T. Rogers died. On February 28th motion for judgment was adjourned to the 30th of November and on November 30th the said motion was withdrawn. On December 1st deponent's firm drew and served notice of motion to open the reference for December 6th and filed a note of issue of the motion. The same was adjourned to December 7th and new note of issue filed. On December 7, 1906, we attended before Mr. Justice Davis and argued the motion to re-open the reference. Mr. Justice Davis handed down a decision on December 17th. On January 2, 1907, we received a proposed order and notice of settlement returnable January 4th. On January 4th the order was signed by Mr. Justice Davis. On January 5th we received and examined the order and notice of its entry. On March 25th we received and examined notice of motion to substitute the German Trust Company as administrator, c. t. a. of William French and Martha French and examined the same. On March 30th we received and examined copy of the order substituting the said German Trust Company and notice of entry, and on April 11th we received and examined the papers on the motion for judgment. On April 16th the motion for judgment was submitted and on April 20th Mr. Justice Laughlin at Special Term Part III, handed down a lengthy decision. On June 11th we received the proposed interlocutory decree and notice of settlement for June 13th and examined the same. On June 13th interlocutory decree was submitted to Mr. Justice Leventritt, and the next day the interlocutory judgment was signed by him. On June 21st we received copy of the interlocutory judgment and notice of entry and examined the same. On July 6th we re-

Trial Without Jury.

ceived notice of sale for July 17th and subsequently had many consultations in regard to the adjournment of the sale. The sale was adjourned by consent to July 29th by agreement with the attorneys for the plaintiffs, but the referee refused to adjourn the same and the sale took place on July 17th and the property in question was sold by the referee in three separate parcels for the aggregate sum of \$400,000. The share of Walter Johnson is one-fifth and in view of the amount involved and the labor expended, deponent believes that the sum of (\$500) is a reasonable allowance in addition to the costs, and therefore, asks for such additional allowance.

(CHARLES W. RALSTON.)

Sworn to before me, this
(29th) day of (July, 1907.)

(EDWARD W. WILCOX,)

Comm. of Deeds, (New York City.)

DECISIONS.

NOTE.

All findings must be embraced in the decision of the Court or the report of the referee if they are to be considered by the Appellate Court for any purpose. (117 App. Div. 519.)

FORM No. 249.

Decision of Judge — After Trial Without a Jury.

NEW YORK SUPREME COURT,
(New York) County.

(JAN. MACPHERSON,) }
Plaintiff,
against

(DOUGLAS FINLANSON,) }
Defendant.

This action having regularly come on for trial and been heard before Hon. (James A. O'Gorman,) one of the justices of this

Dismissing Complaint On Merits — Trial Term.

court, without a jury at Special Term, (*Part III*) of this court, held on the (7th) day of (*April*, 1907,) upon the pleadings and proceedings herein, the plaintiff having appeared by (*Richard K. Golden*,) his attorney, and the defendant having appeared by (*Hugh MacLean*,) his attorney, and the proofs of both parties having been adduced and their respective counsel heard, and due deliberation having been had thereon, I do decide and find as follows:

FINDINGS OF FACT.

I.

II.

III.

and do further decide as

CONCLUSIONS OF LAW.

I.

II.

III.

IV. That the (*plaintiff*) is entitled to judgment * * *

Dated,

(*JAMES A. O'GORMAN*,)

J. S. C.

FORM No. 250.

Decision — By the Court — Dismissing Complaint on the Merits.

(*CITY COURT OF THE CITY OF NEW YORK*,)

(*THE McVICKAR COMPANY*,)

Plaintiff,

against

(*MARKET NATIONAL BANK OF
NEW YORK*,)

Defendant.

The issues in this action duly coming on to be tried before the undersigned, one of the justices of this court, and a jury at a Trial Term thereof, held on the (15th) day of (*February*, 1905,)

Dismissing Complaint On Merits—Trial Term.

at the court house thereof, (*No. 32 Chambers street, in the Borough of Manhattan, City of New York,*) and the issues having been duly tried on said day, and the allegations and evidence of the parties having been heard, and the plaintiff and the defendant having thereupon at the close of the evidence each moved for a direction of a verdict, and the court having thereupon, by consent of all parties, duly given in open court and entered in the minutes, discharged the jury and reserved its decision on said motions; now, after hearing (*Burton Williams,*) of counsel for the plaintiff, and (*Charles Ferguson,*) of counsel for the defendant, and due deliberation having been had, I decide and find as follows:

FINDINGS OF FACT.

I. That the plaintiff is a domestic corporation created by, existing and doing business under the laws of the State of New York, having its principal place of business in *the Borough of Manhattan, City of New York*, and was at all the times hereinafter mentioned the owner in fee of the premises known as 3 Park Place, in the Borough of Manhattan, in the City of New York.

II. That the defendant is a domestic corporation created by and existing under the laws of the United States of America, having been duly organized as such under the National Bank Act, and having its principal place of business in New York city.

III. That the defendant was heretofore engaged in business as a national bank in the Borough of Manhattan, in *the City of New York*, and was so engaged from *June 2nd, 1901*, until the month of *February, 1905*, when a receiver of said bank was appointed by the Comptroller of the Currency pursuant to said National Bank Act.

IV. That the certificate of organization of the defendant was filed with the Comptroller of the Currency on the *19th day of May, 1904*.

V. That its incorporators met and organized on the *27th of May, 1904*, by electing *Thomas Wilson*, president, and *John Peters*, cashier.

VI. That the certificate of the Comptroller of the Currency authorizing the defendant to commence the business of banking was issued on the *2nd day of June, 1904*, and authorized the defendant to commence the business of banking on said *2nd day of*

Dismissing Complaint On Merits — Trial Term.

June, 1904, and that the defendant had no authority to engage in or transact business prior to the said 2nd day of *June*, 1904.

VII. That on the 27th day of *May*, 1904, the plaintiff and the defendant entered into a lease in writing, dated the 1st day of *May*, 1904, whereby plaintiff leased and demised to the defendant a portion of the ground floor of the premises, 3 *Park Place*, in the *Borough of Manhattan*, in the city of *New York*, for use as a banking office; that said letting was for a term of five years to commence on the 1st day of *May*, 1904, and was upon the yearly rent of \$9,000, payable in equal monthly instalments of \$750 each on the 1st day of each month in advance.

VIII. That the defendant entered into possession and enjoyment of the demised premises under said lease on or about the 10th day of *May*, 1904, and continued in the actual occupation thereof until the month of *February*, 1905.

IX. That the plaintiff executed said lease prior to the 27th day of *May*, 1904, and delivered the same to the defendant for execution; that on the 27th day of *May*, 1902, the said defendant by its president and cashier executed said lease and delivered the same to the defendant corporation on said day, and the said lease was thereupon accepted and retained by the plaintiff.

X. The defendant paid the rent of the said premises for the month of *May*, 1904, and for each and every month thereafter to *January*, 1905, in advance as required by the terms of said lease.

CONCLUSIONS OF LAW.

I. That the defendant in this action was not at the time of the execution and delivery of the lease set forth in the complaint authorized by the Comptroller of the Currency to commence the business of banking.

II. That the execution of the lease set forth in the complaint by the defendant was not incidental and necessarily preliminary to its organization and to its entering upon the business of banking.

III. That the defendant corporation not being authorized to commence business, had no authority to execute and deliver the lease set forth in the complaint on the 27th day of *May*, 1904, or to legally bind the defendant corporation thereby; that the act of the officers in executing and delivering said lease on said day was null and void.

 Dismissing Complaint On Merits — Special Term.

IV. That the defendant is entitled to judgment dismissing the complaint of the plaintiff on the merits, with costs, which are hereby awarded to the defendant and against the plaintiff to be taxed, and I hereby direct judgment accordingly.

Dated, *New York, February 24th, 1905.*

(*F. B. DELEHANTY,*)

Justice of the (*City Court of the city of New York.*)

 FORM No. 251.

Decision Dismissing Complaint — Special Term.

SUPREME COURT,

(*New York*) County.

(*CLARENCE D. BALDWIN,*)

Plaintiff,

against

(*JOHN J. McGRATH, Impleaded*

with TERENCE McDONNELL,)

Defendants.

This action having come on for trial by the court at a Special Term held by the undersigned without a jury on the (18th) day of (*January, 1906,*) and the defendant (*John J. McGrath,*) by his counsel, having moved for judgment on the pleadings, and after hearing (*Charles F. Brown,*) Esq., counsel for said defendant, in support of said motion, and (*Lucius H. Beers,*) Esq., counsel for plaintiff, in opposition, and upon due deliberation I find and decide that the complaint (*and supplemental complaint*) herein (*do*) not state facts sufficient to constitute a cause of action, and I accordingly direct judgment to be entered herein dismissing the complaint (*and the supplemental complaint,*) with costs to said defendant to be taxed.

(*J. A. O'GORMAN,*)

Justice of the Supreme Court
of the State of New York.

JUDGMENTS.

FORM No. 252.

Statement and Confession of Judgment.

NEW YORK SUPREME COURT,
(New York) County.

(RALPH HAYNES),	}
Plaintiff,	
against	
(WILLIAM JOHNSON and HOW- ARD BROWN,) Defendants.	

The undersigned, one of the defendants above named, hereby confesses judgment in this action in favor of (*Ralph Haynes*), plaintiff above named, for the sum of (*three hundred and fifty* (\$350) dollars, and hereby authorizes him, his heirs, administrators or assigns, to enter judgment therefor against him on or after (*October 15, 1906*).

This confession of judgment is for a debt justly to become due to the plaintiff on (*October 1, 1906*), arising upon the following facts:

On the first day of September, 1904, the undersigned made and delivered to the plaintiff his promissory note, of which the following is a copy:

\$350.00.

New York, Sept. 1, 1906.

Thirty days after date I promise to pay to the order of Ralph Haynes Three hundred and fifty (\$350) dollars.

Value received.

(WILLIAM JOHNSON.)

The consideration of said note was professional services rendered by plaintiff to the undersigned as his attorney in an action in the Supreme Court, county of Westchester, brought against undersigned by Arthur Morton and others, which action the plaintiff was retained to defend for the agreed sum of three hundred and fifty (\$350) dollars.

(WILLIAM JOHNSON.)

Statement For, On Confession.

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*WILLIAM JOHNSON*,) one of the defendants above named,
 being duly sworn, says that he is the defendant making the above
 statement and confession of judgment, and that the matters of fact
 therein set forth, are true.

(*WILLIAM JOHNSON*.)

Sworn to before me, this }
 25th day of *September*, 1906. }

(*WILLIAM BARBER*,)

Notary Public,

(*New York*) Co.

FORM No. 253.

Judgment Entered on Confession — With Bill of Costs.*

NEW YORK SUPREME COURT,
 (*New York*) County.

(*RALPH HAYNES*,)

Plaintiff,

against

(*WILLIAM JOHNSON and HOW-*
ARD BROWN,)

Defendants.

} Statement for Judgment.

* UPON ENTRY OF JUDGMENT BY CONFESSION.

Costs by statute (§ 1275, Code)	\$15 00
For each additional defendant served, \$2. (§ 3251, subd. 1, Par. 2), each	2 00
Affidavits. (§ 3298, Code), each	12
Transcript of judgment and filing. (§ 3301, Code, Pars. 7 and 8) ..	18
For serving summons and complaint. (§ 3307, subd. 1, Code)	1 00
Clerk's fees on entering judgment. (§ 3307, Par. 3, Code)	50
Postage. (§ 3256, Code)	00
Sheriff's fee on execution. (§ 3307, subds. 6 and 10, Code), and mile- age, 10 cents a mile one way, in addition to fee	1 75
Satisfaction and filing. (§ 3304, subd. 9, Code)	37

On Confession — Costs Thereon.

Amount confessed		\$350 00
Interest		
Costs by statute.....	\$15 00	
Affidavits	24	
Transcripts and docketing.....	18	
Clerk's fees entering judgment.....	50	
Postage		
Sheriff's fees on execution.....	2 25	
Satisfaction piece	25	18 42
		<hr/>
Total		\$368 42
		<hr/>

STATE OF NEW YORK, }
County of *New York*, } ss.:

(*JOSEPH KERNAN*,) being duly sworn, says, that he is managing clerk for the plaintiff's attorney in the above action; that the disbursements above mentioned have been made in said action or will be necessarily made or incurred therein, as he verily believes.

(*JOSEPH KERNAN*.)

Sworn to before me, this }
16th day of *October*, 1904, }

(*FRANK WHITE*,)

Notary Public (*N. Y.*) Co.

JUDGMENT.

On filing the statement and confession of judgment hereto annexed it is hereby adjudged that *Ralph Haynes*, the plaintiff, do recover of *William Johnson*, one of the defendants, the sum of *three hundred and fifty* (\$350) dollars, the amount claimed and interest, with *eighteen and 42/100* (\$18.42) dollars costs and disbursements, amounting in the whole to the sum of *three hundred and sixty-eight and 42/100* (\$368.42) dollars, and that said plaintiff have execution therefor.

(*THOMAS L. HAMILTON*,)

Clerk.

Statement For, On Default.

FORM No. 254.

Statement and Judgment on Default.*

(CITY COURT OF THE CITY OF NEW YORK).

(JOHN JONES,)

Plaintiff,

against

(JOHN DOE and RICHARD ROE,)

Defendants.

Statement for judgment.

Amount claimed in (*summons*)..... (\$1,000 00)

Interest (30 00)

(\$1,030 00)

Costs by statute..... (\$15 00)

Defendants served with

process, \$2 each (2 00)

Affidavits (2), (12½c each)..... (25)

Transcripts and docketing. (always
same) ... (12)

Serving complaint and summons..... (3 00)

Clerk's fee entering judgment (*City*.
Court, \$1) (1 00)

Postage (25)

Satisfaction piece (25)

*ENTRY OF JUDGMENT BY DEFAULT.

Costs by statute. (§ 3251, Subd. 1, Par. 1, Code)..... \$15 00

For each additional defendant served, \$2. (§ 3251, Subd. 1, Par. 2)
each 2 00

Affidavits. (§ 3298, Code), each..... 12

Transcript of judgment and filing. (§ 3301, Code, Pars. 7 and 8)... 18

For serving summons and complaint. (§ 3307, Subd. 1, Code)..... 1 00

Clerk's fees on entering judgment. (§ 3307, Par. 3, Code)..... 50

Postage. (§ 3256, Code)..... 00

Sheriff's fee on execution. (§ 3307, Subds. 6 and 10, Code)..... 1 75

Mileage, a mile, one way, in addition to fee..... 10

Satisfaction and filing. (§ 3304, Subd. 9, Code)..... 37

On Default In Pleading.

Sheriff's fees on execution (\$1.75, and mileage, 10c a mile).....	(\$2 05)	
		(\$24 40)
		(\$1,054 40)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*EZRA WILLIAMS*), being duly sworn, says, that he is the plaintiff's attorney in the above-entitled action; that the disbursements above mentioned, have been made in said action, or will be necessarily made or incurred therein; that the time for the defendant to appear, answer or demur herein has expired, and that said defendant has not appeared or answered or demurred herein, except.....

(*EZRA WILLIAMS*.)

Sworn to before me, this }
(12th) day of (*May*, 1904). }

(*THEODORE RYAN*),

Notary Public,
(*New York*) County, No. (326).

JUDGMENT.

Entered (*May 12*, 1904.) The summons (*and complaint*) in this action having been personally served on (*John Doe and Richard Roe*), the defendants on the (*5th*) day of (*May*, 1904), and the time for said defendants to appear, answer or demur herein having fully expired and said defendants not having appeared or answered or demurred herein except.....

NOW ON MOTION of (*Ezra Williams*), plaintiff's attorney, it is hereby adjudged that (*John Jones*), the plaintiff, do recover of (*John Doe and Richard Roe*), the defendants, the sum of (*ten hundred and thirty dollars*) (\$1,030.00), the amount claimed and interest, with (*twenty-four and 45/100 dollars* (\$24.45)) costs and disbursements, amounting in the whole to the sum of (*ten hundred fifty-four and 45/100 dollars* (\$1,054.45)), and that said plaintiff have execution therefor.

(*THOMAS F. SMITH*),

(SEAL.)

Clerk.

For Sum Of Money.

FORM No. 255.

Judgment for Sum of Money.

(CITY COURT OF THE CITY OF NEW YORK.)

(HENRY MANN,)

Plaintiff,

against

(JOHN ANDERSON,)

Defendant.

The issues in the above-entitled action having come on for trial before Honorable (*Francis B. Delahanty*) and a jury at Trial Term, *Part V.*, of this court, and the jury having returned a verdict in favor of *the (plaintiff)* and against *the (defendant)* for the sum of (*three hundred dollars (\$300)*), and the costs of the plaintiff having been taxed at (*one hundred and five and 02/100 (\$105.02)*) dollars.

NOW, on motion of (*Charles H. Clinton,*) attorney for plaintiff,

IT IS ADJUDGED, that *the (plaintiff, Henry Mann,)* do recover of *the (defendant, John Anderson,)* the sum of (*three hundred (\$300)*) dollars, together with (*one hundred and five and 02/100 (\$105.02)*) dollars costs as taxed, making in all the sum of (*four hundred and five and 02/100 (\$405.02)*) dollars, and that said *plaintiff* have execution therefor.

Dated, (*October 15, 1904.*)

(*THOMAS F. SMITH.*)

Clerk.

Dismissing Complaint — Trial Term.

FORM No. 256.

Judgment Dismissing Complaint — Trial Term.

SUPREME COURT,

County of (*New York*).

CATHERINE DE WOLF,)
Plaintiff,
against

(SIMEON FORMAN and SAMUEL
T. SHAWMAN,)
Defendants.

Judgment.

Judgment, (*November 16, 1906.*)

The summons herein having been personally served on the defendants, who appeared by (*John C. Gulich*) as their attorney, and the complaint having thereupon been served and the defendants having served their answer, and the issues thus raised having come on for trial on the (*14th*) day of (*November, 1906,*) at a Trial Term of this Court, (*Part X*) before Mr. Justice (*Charles H. Truax*), and a jury, and the defendants having moved on the pleadings to dismiss the complaint and the same having been dismissed, and the defendants' costs having been duly adjusted on notice at the sum of (*One hundred and fourteen and 32-100*) dollars, now on the summons and pleadings herein, and on reading and filing a certified copy of the clerk's minutes, showing such dismissal, and on motion of (*John C. Gulich*), defendants' attorney, it is

ADJUDGED, that this action be and the same is hereby dismissed, and that the defendants, (*Simeon Forman and Samuel T. Shawman,*) recover of the Plaintiff, (*Catherine De Wolf,*) the sum of (*One hundred and fourteen and 32-100*) dollars costs as taxed, and have execution therefor.

(*PETER J. DOOLING.*)

Clerk.

(SEAL.)

Dismissing Complaint — Special Term.

FORM No. 257.

Judgment Dismissing Complaint — Special Term.

At a Special Term, (*Part III*,) of the Supreme Court, held in and for the County of (*New York*,) at the County Court House, in said County, on the (*3rd*) day of (*February*, 1906.)

PRESENT:

Hon. (*JAMES A. O'GORMAN*,)
Justice.

<p>(<i>CLARENCE D. BALDWIN</i>,) Plaintiff, against (<i>JOHN J. McGRATH</i>, impleaded with <i>TERRENCE McDONNELL</i>,) Defendants.</p>	}
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This action having duly come on for trial before Mr. Justice (*James O'Gorman*,) at a Special Term, (*Part III*,) of this Court, held on the (*18th*) day of (*January*, 1906,) at the County Court House in the County of (*New York*,) and the defendant (*McGrath*) having moved for judgment on the pleadings, and the court having heard the parties thereon, and after due deliberation having made and filed on the (*2nd*) day of (*February*, 1906,) a decision in favor of the defendant, (*McGrath*,) and against the plaintiff, directing judgment as hereinafter stated, with costs to said defendant against the plaintiff, to be taxed,

NOW, on motion of (*Sol. A. Cohn*,) Esq., attorney for said defendant (*McGrath*,) it is

ADJUDGED, that the complaint (*and supplemental complaint*) of the plaintiff be and the same hereby (*are*) dismissed, and that said defendant (*McGrath*) recover of the plaintiff his costs, as taxed, amounting to the sum of (*Three hundred, twenty-nine and 66/100 dollars* (\$329.66,) and that he have execution therefor.

Judgment signed and entered this (*3rd*) day of (*February*, 1906.)

(*J. A. O'GORMAN*,)

J. S. C.

(*PETER J. DOOLING*,)

Clerk.

Dismissing Complaint On Merits—Trial Term.

FORM No. 258.

Judgment Dismissing Complaint Upon the Merits.

SUPREME COURT OF THE STATE OF NEW YORK,

(New York) County.

(JOHN R. BAKER,)

Plaintiff,

against

(CHARLES J. PRANKARD,)

Defendant.

The issues in this action having been brought on for trial before Mr. Justice (*David Leventritt*) and a jury at a Trial Term, (*Part III.*), of this court, held on the (15th) day of (*February, 1907*), at the County Court House in the (*Borough of Manhattan*), City of (*New York*), and the issues having been duly tried, and the plaintiff and the defendant having thereupon at the close of all of the evidence each moved for a direction of a verdict; and the court having thereupon, by consent of all the parties, duly given in open court and entered in the minutes, discharged the jury, and reserved its decision on the said motions; and the court having, after due deliberation, duly directed judgment in favor of the defendant, and against the plaintiff, dismissing the plaintiff's complaint upon the merits, with costs, and having thereafter, on the (24th) day of (*February, 1907*), duly made and filed a decision in favor of the defendant, and against the plaintiff, containing a statement of the facts found and the conclusions of law thereon, and directing judgment in favor of the defendant, and against the plaintiff, dismissing the complaint upon the merits, with costs, and defendant's costs having been duly adjusted at (*eighty-five*) dollars and (*eighteen*) cents:

NOW, on motion of (*Benjamin F. Butler*), attorney for defendant, it is

ADJUDGED, that the plaintiff's complaint be, and the same is, hereby dismissed, upon the merits, and that the defendant, (*Charles J. Prankard*), do recover of the said (plaintiff, costs of this action as taxed and that execution issue therefor, for the sum of (*eighty-five and 18/100*) (\$85.18) dollars.

Dated, (*February 24, 1907*.)

(SEAL.)

(*PETER DOOLING*), Clerk.

COSTS.

The following are ready references as to *amounts* of costs and disbursements. They are given in the order of the usual printed blank of bill of costs.

BILL OF COSTS.

COSTS BEFORE NOTICE OF TRIAL:

to plaintiff, if action enumerated in § 420 of the Code	\$15 00
(§ 3251 Code, subd. 1.)	
in every other action	25 00
(§ 3251 Code, subd. 1.)	
to defendant, usually,	10 00
(§ 3251 Code, subd. 2; § 3258.)	

COSTS AFTER NOTICE OF TRIAL 15 00

to either party, usually,	
(§ 3251 Code, subd. 3, par. 1.)	
if two trials	30 00

ADDITIONAL DEFENDANTS SERVED, up to ten, for each . .	2 00
above ten, for each	1 00
to plaintiff (§ 3251 Code, subd. 1, par. 2).	

TRIAL FEE, ISSUE OF FACT. (For each trial)	30 00
to either party (§ 3251 Code, subd. 3, par. 5).	

TRIAL FEE, ISSUE OF LAW	20 00
to either party (§ 3251 Code, subd. 3, par. 4).	

ALLOWANCE BY STATUTE

to plaintiff in foreclosure, partition and adjudication upon will or other instrument, determination of claim to real property, or where there has been a warrant of attachment.	
10% if sum not over \$200;	
5% on next \$400;	
2% on next \$1,000.	
(§ 3252 Code.)	

ALLOWANCE BY COURT . . . . .	....
to either party (§ 3253 Code).	

MOTION, usually,	10 00
to either party (§ 3251 Code, subd 3, par. 9);	
(§ 3251 Code, subd. 1, par. 4).	

ORDER OF PUBLICATION	10 00
to plaintiff (§ 3251 Code, par. 4).	

Items And Amounts.	
TRIAL OCCUPIED MORE THAN TWO DAYS.....	\$10 00
to either party (§ 3251 Code, subd. 3, par. 5).	
PROCURING INJUNCTION ORDER OR AN ORDER OF ARREST.	10 00
(§ 3251 Code, subd. 1, par. 5.)	
APPOINTMENT OF GUARDIAN OF INFANT DEFENDANT..	10 00
to plaintiff (§ 3251 Code, subd. 1, par. 3).	
EXAMINATION OF PARTY BEFORE TRIAL.....	10 00
to either party (§ 3251 Code, subd. 3, par. 2).	
ATTENDING AND TAKING DEPOSITION <i>De Bene Esse</i> ..	10 00
to either party (§ 3251 Code, subd. 3, par. 2).	
DRAWING INTERROGATORIES TO ANNEX TO COMMISSION.	10 00
to either party (§ 3251 Code, subd. 3, par. 3).	
MAKING AND SERVING CASE.....	20 00
to either party (§ 3251 Code, subd. 3, par. 6).	
MAKING AND SERVING AMENDMENTS TO CASE.....	20 00
to either party (§ 3251 Code, subd. 3, par. 7).	
MAKING AND SERVING CASE OF MORE THAN 50 FOLIOS.	30 00
to either party (§ 3251 Code, subd. 3, par. 6).	
TERM FEES:	
\$10.00 for each term not exceeding five, excluding term at which case is tried.	
to either party (§ 3251 Code, subd. 3, par. 11).	
Appellate Division (§ 3251 Code, subd. 4, par. 4), \$10, for each term not exceeding five, excluding term at which case is argued.	
Court of Appeals (§ 3251 Code, subd. 5, par. 3), \$10, for each term not exceeding ten, excluding term at which case is argued.	
MOTION FOR NEW TRIAL, SPECIAL TERM.....	60 00
to either party (§ 3251 Code, subd. 3, par. 8); (§ 3251 Code, subd. 4).	
upon a case before argument.....	\$20 00
upon a case for argument.....	40 00
PROCEEDINGS BEFORE AND AFTER GRANTING NEW TRIAL	25 00
to either party (§ 3251 Code, subd. 3, par. 10).	
APPLICATION FOR JUDGMENT ON SPECIAL VERDICT, BEFORE ARGUMENT	20 00
to either party (§ 3251 Code, subd. 3, par. 8, subd. 4).	

Taxable Disbursements.

APPLICATION FOR JUDGMENT ON SPECIAL VERDICT, FOR ARGUMENT	\$40 00
to either party (§ 3251 Code, subd. 3, par. 8); (§ 3251 Code, subd. 4).	
APPEAL TO APPELLATE DIVISION, BEFORE ARGUMENT.	20 00
to either party (§ 3251 Code, subd. 4).	
APPEAL TO APPELLATE DIVISION, FOR ARGUMENT.	40 00
to either party (§ 3251 Code, subd. 4).	
APPEAL TO COURT OF APPEALS, BEFORE ARGUMENT.	30 00
to either party (§ 3251 Code, subd. 5, par. 1).	
APPEAL TO COURT OF APPEALS, FOR ARGUMENT.	60 00
to either party (§ 3251 Code, subd. 5, par. 2).	
PREPARING CASE ON APPEAL TO COURT OF APPEALS. . . . .	....
(§ 3251, subd. 3.)	
DAMAGES IN COURT OF APPEALS FOR DELAY. . . . .	....
not exceeding 10% of the amount of the judgment to either party (§ 3251 Code, subd. 5, par. 4).	
INTEREST ON VERDICT. . . . .	....

DISBURSEMENTS.

PAID FOR SEARCHES. . . . .	....
(§§ 3256, 3304, Code.)	
PAID REFEREE'S REPORT. . . . .	....
(§§ 3256, 3296, Code.)	
PAID REFEREE'S FEES. . . . .	....
(§§ 3256, 3296, Code.)	
COMMISSIONER'S FEES . . . . .	....
(§ 3256 Code.)	
CLERK'S FEES ON TRIAL.	1 00
(§ 3301 Code, par. 2.)	
CLERK'S FEES ON FILING NOTICE OF PENDENCY OF ACTION . . . . .	....
10 cents a folio.	
to plaintiff (§ 3304 Code, par. 6).	
CLERK'S FEES ENTERING JUDGMENT, usually,	50
(§ 3301 Code, par. 3.)	
AFFIDAVITS AND ACKNOWLEDGMENTS. . . . .	....
(§§ 3289, 3291 Code.)	
affidavits, 12 cents each.	
acknowledgments, 25 cents each.	

Taxable Disbursements.	
SERVING COPIES SUMMONS AND COMPLAINT.....	\$1 00
(§ 3307 Code, subd. 1.)	
by Sheriff, New York County.....	1 50
SATISFACTION PIECE	37
(§ 3304 Code, par. 9, 25 cents.)	
(§ 3301 Code, par. 12, 12 cents.)	
TRANSCRIPTS AND FILING.....	18
(§ 3301 Code, pars. 7, 8; § 3304 Code.)	
CERTIFIED COPY JURGMENT.....	....
5 cents a folio (§ 3301 Code, par. 5).	
CERTIFIED COPY ORDERS.....	....
5 cents a folio (§ 3301 Code, par. 5; § 3304 Code).	
POSTAGE .....	....
(§ 3256 Code.)	
JURY FEE (25 cents each).....	3 00
(§ 3313 Code.)	
STENOGRAPHER'S FEES .....	....
under stipulation (§ 3311 Code).	
(See cases cited in Nichol's Practice, § 2140.)	
SHERIFF'S FEES ON EXECUTION.....	....
New York County, at least, (one mile).....	1 85
L. 1890, ch. 523, § 17, subd. 6, as amended	
by L. 1892, ch. 418, and L. 1897, ch. 636.	
for receiving	\$1 50
for return	25
mileage:	
10 cents each mile one	
way	10
SHERIFF'S FEES ON EXECUTION:	
generally, (one mile).....	72
(§ 3256, Code.)	
(§ 3307, Code, subd. 6	\$0 50
(§ 3307, Code, subd. 10.....	12
mileage	10
10 cents each mile one way.	
SHERIFF'S FEES ON ATTACHMENT OR REPLEVIN:	
(§ 3307, Code, subds. 2 and 7.)	
In New York County:	
(See same laws as to fees on execution.)	

Taxable Disbursements.

SHERIFF'S FEES ON ATTACHMENT OR REPLEVIN — Cont.

In New York County — Cont.

attachment:

for levying warrant without summons...	\$5 25
for levying warrant with summons.....	7 00
for service of each additional warrant...	1 50
mileage, 12 cents a mile, one way.	

replevin:

executing requisition	8 00
mileage, 12 cents a mile, one way.	

SHERIFF'S TERM FEE..... 50

(§ 3307, Code, subd. 4.)

In New York County, this is included in fee paid for filing note of issue in jury cases. In most counties this is the only fee that has to be paid on filing such note of issue.

CORONER'S FEES ON EXECUTION.....
same as sheriff (§ 3310 Code).

EXTRACT FROM MINUTES, usually, 10
5 cents for each folio. (§ 3301 Code, par. 5.)

PAID PRINTING CASES.....
(§ 3256, Code.)

PAID PRINTING POINTS.....
(§ 3256, Code.)

PAID COPY OF STENOGRAPHER'S MINUTES.....
(§ 3256, Code.)

(See cases cited in Nichol's Prac., § 2140.)

Where party desires to tax as a disbursement copy of stenographer's minutes, the affidavit should be very full showing that they are necessary to enable the party to prepare his case or propose amendments to his opponent's case.

PAID COPIES FOLLOWING PAPERS.....

Where the final judgment in an action allows for printing and stenography, these items may be taxed as disbursements.

Where there are more than ten defendants, the expense for printing the summons and complaint may be taxed.

Taxable Disbursements.	
CLERK'S FEES FOR TAXING COSTS.....	....
charged in some counties (not in New York) at...	\$0 25
FILING RETURN TO COURT OF APPEALS.....	50
(§ 3300 Code.)	
PAID UPON FILING NOTE OF ISSUE (NEW YORK COUNTY).	
not provided for in some blanks. (Variable.)	
ATTENDANCE OF FOLLOWING WITNESSES:	
fee, 50 cents a day, and mileage, 8 cents a mile, one way.	
..... () days, () miles.	
..... () days, () miles.	
..... () days, () miles.	
The following are not contained on the ordinary printed blank for bills of cost, but should not be overlooked.	
PAID FOR PUBLICATION OF SUMMONS, ETC.....	....
(§ 3256 Code.)	
SURVEYOR IN PARTITION OR DOWER.....	....
to either party (§§ 1682, 3256, 3257, 3299, Code.)	
MOTION FOR NEW TRIAL WITHOUT A CASE, usually...	10
to either party (§ 3251 Code, subd. 3, par. 9.)	
APPLICATION FOR JUDGMENT RENDERED AND SUBJECT TO OPTION OF THE COURT, FOR ARGUMENT....	....
(§ 3251 Code, subd. 4.)	
EXCEPTIONS ORDERED HEARD AT APPELLATE DIVISION IN FIRST INSTANCE, BEFORE ARGUMENT.....	....
(§ 3251 Code, subd. 4.)	
EXCEPTIONS ORDERED HEARD AT APPELLATE DIVISION, FOR ARGUMENT .....	....
(§ 3251 Code, subd. 4.)	
APPEAL FROM INTERLOCUTORY JUDGMENT OR ORDER OF THE CITY COURT OF NEW YORK.....	10 00
(§§ 3251 Code, subd. 4, par. 4; 3189.)	
IN A CASE FOR INCREASED COSTS, ONE-HALF ADDITIONAL .....	....
(§§ 3258, 3259, Code.)	

Taxable Disbursements.

*CLERK'S FEES ON ARGUMENT (Appellate Division, Appellate Term, 1st Department,) usually.....	\$1 00
PAID REFEREE SETTLING CASE.....	....
CLERK'S FEES FOR REMITTITUR.....	....
RECORDING MORTGAGE IN FORECLOSURE RULE.....	....
(§ 3291 Code.)	
FILING NOTICE OF APPEAL, Court of Appeals.....	50
(§ 3300 Code, par. 2.)	
PAID FOR REMITTITUR, Court of Appeals (10 cents a folio) .....	....
(§ 3300 Code.)	
PAID FOR CERTIFIED TRANSCRIPTS OF JUDGMENT, etc. 12 cents each .....	....
FILING MECHANIC'S LIEN.....	....
(§ 4 chap. 342, Laws 1885.)	
PAID CERTIFYING PRINTED RECORD ON APPEAL (one cent a folio).....	....
(§ 3304, subd. 5, Code.)	

* There is no authority for the charging of any fee by the clerk of the Appellate Division, but in some departments the fees which were collected in the General Term, under section 312 of the Code of Procedure, have been continued as a matter of custom. Section 1355 of the present Code refers to the fees of the clerk of the Appellate Division, but there is no statutory authority for the charging of any fees unless it can be found in sections 3301, 3304 and 3306 of the Code of Civil Procedure. Section 3301 is a re-enactment of section 312 of the old Code, under which the General Term clerks' fees were charged, but the new section clearly refers only to the services rendered by the clerk of a trial court. However, by a very strained construction of this section, based upon the construction of section 252 of the former Code in two very old cases (*Wilcox v. Curtis*, 10 How. Pr. 91 [1854], and in 5 How. Pr. 11 [1850]) fees for argument and remittitur are still collected in some departments upon the ground that the determination of an appeal is a judicial examination of the issues between the parties, and hence to be regarded the same as a trial. This, however, ignores the plain distinction throughout the Code of Civil Procedure between a trial and an appeal and the omission of section 252 of the old Code from the present Code.

Objections To Bill Of Costs.

FORM No. 259.

Objections to Bill of Costs.

SUPREME COURT,
(*Onondaga*) County.

(*THOMAS PARKER,*)
Plaintiff-Respondent,

vs.

(*THE NEW YORK RAILROAD
COMPANY,*)
Defendant-Appellant.

Upon the retaxation of the (*plaintiff and respondent's*) bill of costs herein, the (*defendant and appellant*) objects to and requests that the following item be stricken off from such bill of costs.

I. It objects to the item:

("Stenographer's fees. \$110.") and asks that the same be stricken from the said bill of costs on the ground that the same is not a taxable disbursement, and that same cannot be taxed as a disbursement upon this appeal.

Dated (*November 28, 1900.*)

(*COWEN & JONES,*)
Attorneys for (*Defendant-Appellant,*)
(*32 Pine St., N. Y. City.*)

Affidavit.

FORM No. 260.

Affidavit in Support of Bill of Costs.

SUPREME COURT,
(Onondaga) County.

(THOMAS PARKER,) }
Plaintiff-Respondent,

vs.

(THE NEW YORK RAILROAD }
COMPANY,) }
Defendant-Appellant.

STATE OF NEW YORK, }
County of (Onondaga), } ss.:

(WILLIAM JAMES,) being duly sworn, deposes and says:
That he is one of the attorneys for the (*plaintiff-respondent*)
herein.

That the item of (\$110) for (*a copy of the stenographer's minutes*) was a necessary and actual disbursement, upon appeal herein. That the above-named appellant and defendant appealed from the judgment and order of the trial term of this court to the Appellate Division.

That a proposed case and exceptions of some four hundred pages closely typewritten matter, containing an alleged transcript of the stenographer's minutes in a narrative form, was served upon respondent's attorneys upon such appeal; that thereupon and upon an examination of said proposed case and exceptions, it became necessary to propose some five hundred and twenty-three amendments and to properly prepare and propose said amendments so as to permit the settling of said proposed case and exceptions, and the proposed amendments, and to submit the same to the trial justice, it became necessary by reason of Court Rule, No. 32, to obtain a copy of the stenographer's minutes of the trial of the above-entitled action in order to mark upon each of said proposed

Affidavit.

amendments and upon the stenographer's minutes, the part to which the proposed amendments were applicable and upon the respondent herein, determining and requiring that such proposed case should conform to the minutes of the stenographer; it became necessary for respondent to refer at the end of each amendment to the proposed page of such minutes.

That the appellant-respondent's attorney failed to agree upon such proposed amendments, and it became necessary for them to appear before the trial justice to settle the case. That all but twenty-two of said amendments were allowed. That all of said proposed amendments were of vital importance to respondent's success.

That deponent repeatedly before proposing such amendments to said proposed case, requested appellant's attorneys herein to loan him their copy of stenographer's minutes herein in order to propose amendments thereto as has always been customary practice among attorneys in such matters, but said attorneys positively refused so to do and informed deponent that if respondent wanted said minutes they would have to buy them. That thereupon deponent was obliged to and did buy a copy of said minutes from the court stenographer, paying him the sum aforesaid, and that it was a necessary disbursement and a taxable cost to respondent, upon appeal for the purpose of preparing the respondent's amendments to the appellant's proposed case in appeal herein.

(*WILLIAM JAMES.*)

Sworn to before me, this
(28th) day of (*November*, 1900.)

(*PETER COLEY,*)

Notary Public,

(*Onondaga*) County.

 Notice Of Motion To Retax.

FORM No. 261.**Notice of Motion for Retaxation of Costs.**

SUPREME COURT,
(*Onondaga*) County.

(THOMAS PARKER,) Plaintiff-Respondent, vs. (THE NEW YORK RAILROAD COMPANY,) Defendant-Appellant.	}
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Sir:

PLEASE TAKE NOTICE that upon the annexed affidavit of (*Peter Coley*), verified the (30th) day of (*November, 1900,*) and upon the bill of costs and the retaxed bill of costs herein; the objection made to the retaxation of the item thereupon, and the affidavit of (*William James*) verified the (28th) of (*November, 1900,*) and the judgment roll herein, all filed in (*Onondaga*) County Clerk's office, on the (28th) day of (*November, 1900,*) being all the papers used before the County Clerk upon the retaxation of the costs herein, a motion will be made at a Special Term of the Supreme Court, appointed to be held at the Court House in the City of (*Syracuse*), N. Y., on the (8th) day of (*December, 1906,*) at (ten) o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order providing for a retaxation of the costs of the plaintiff herein, and for an allowance of the item of (\$110) for (*a copy of the stenographer's minutes*), contained in (*plaintiff's*) bill of costs herein and stricken therefrom by the Clerk of (*Onondaga*) County upon the retaxation thereof and for such other and further relief as to the court may seem just and proper besides the costs of this motion.

Dated at (*Syracuse, N. Y.,*) (*November 30, 1900.*)

Yours, etc.;

(*JAMES & MANN,*)

(*Plaintiff and Respondent's*) Attorneys,
Office and P. O. Address (3 *Main*) Street,

(*Syracuse*), N. Y.

To (*COWEN & JONES,*)

Attys. for defts.-appls.

Motion to Retax — Affidavit.

FORM No. 262.

Motion for Retaxation — Affidavit.

SUPREME COURT,
(*Onondaga*) County.

(*THOMAS PARKER*,)
Plaintiff-respondent,
vs.

(*THE NEW YORK RAILROAD
COMPANY*,)
Defendant-appellant.

STATE OF NEW YORK, }
County of (*Onondaga*), } ss.:

(*Peter Coley*), being duly sworn, deposes and says, that he is one of the attorneys for the (*plaintiff*) herein, and is familiar with all the proceedings in the above-entitled action; that herebefore, and on the (26th) day of (*November, 1900*), the (*plaintiff's*) costs upon appeal herein were taxed by the Clerk of the County of (*Onondaga*) at the sum of (\$226.01), and a copy of which bill of costs and notice of adjustment thereof was duly served upon (*defendant*) and appellant's attorney on that day with a notice of readjustment for the (28th) of (*November, 1900*), at (10) o'clock A. M.

That the readjustment of said costs was duly postponed to (*November 28, at 2 p. m.*) That at such date and time deponent appeared on the part of the (*plaintiff-respondent*) upon the retaxation of his costs herein; that the (*defendant-appellant*) appeared and objected to the allowance of certain of the items contained in said bill of costs.

That the (*defendant*) filed written objections thereto; that the (*defendant*) objected to the item of (\$110) for (*copy of stenographer's minutes*) on the ground that it was not a taxable cost or disbursement, that thereupon the Clerk sustained said objection and struck said item of (\$110) for (*stenographer's minutes*) from the bill of costs as taxed.

That the objections to said item appear more fully by the written objections which were filed by the (*defendant-appellant*) herein.

Motion to Retax — Affidavit.

That on said (28th) day of (November, 1900,) the said Clerk of (Onondaga) County sustained said objection made by defendant to the fees for a copy of stenographer's minutes and struck out the said item above mentioned in his retaxation of (*plaintiffs-respondents*) costs upon appeal herein, and that the costs and disbursements herein were retaxed on said (28th) of (November, 1906) in the sum of (\$106.01); that deponent duly presented said item above mentioned for retaxation and opposed the sustaining of the said Clerk of the objections thereto; that the (*plaintiff*) is desirous of having such retaxation reviewed and of having said costs and disbursements again taxed by the County Clerk, and of having the item so stricken out allowed and included in said bill of costs;

That no previous application for the relief asked for herein has been made to any court or judge.

(PETER COLEY.)

Sworn to before me this (30th)
day of (November, 1900.)

(FRANK C. JOHNSON,)

Notary Public,

(Onondaga) County, N. Y.

Order Retaxing.

FORM No. 263.

Order Retaxing Costs.

At a Special Term of the Supreme Court, held in
and for the County of (*Onondaga*,) at the
Court House, in the City of (*Syracuse*,) on
the (8th) day of (*December*, 1906.)

PRESENT:

Hon. (W. S. ANDREWS,)

Justice.

(THOMAS PARKER,)

Plaintiff-respondent,

against

(NEW YORK RAILROAD COMPANY,)

Defendant-appellant.

A motion having been made by the above named (*plaintiff-respondent*,) to review a taxation of costs made herein by the Clerk of (*Onondaga*) County on the (28th) day of (*November*, 1906,) in so far as the Clerk upon said taxation struck out and disallowed from said bill of costs of the (*plaintiffs-respondents*) the item of (\$110) paid for (*a copy of the stenographer's minutes*,) of the trial hereof, obtained by (*plaintiff-respondent*) to prepare amendments to the case and exceptions upon appeal herein.

NOW, upon reading and filing the affidavit of (*Peter Coley*,) verified the (30th) day of (*November*, 1906,) the notice of motion thereto attached, with proof of due service thereof, together with the papers referred to in said notice of motion, and after hearing (*James & Mann*) in favor of said motion, and (*Cowen & Jones*,) opposed, it is

ORDERED, that a retaxation of (*plaintiff-respondents*) costs upon the appeal of the (*defendant-appellant*) to the Appellate Division of the Supreme Court is hereby ordered, and the Clerk of (*Onondaga*) County is hereby directed to allow the item of (\$110) stricken out from the (*plaintiff's*) bill of costs as a taxable disbursement of the (*plaintiff-respondent*) herein, and (*plaintiff*) is hereby allowed \$10 costs of this motion.

(W. S. A.,)

J. S. C.

Costs Of Minutes Allowed As Disbursements.

FORM No. 264.

Order Allowing Costs of Minutes as a Disbursement.

At a (*Special Term, Part V.*) of the Supreme Court
of the State of New York, held in and for the
County of (*New York*), at the County Court
House in (*the Borough of Manhattan, City of
New York*), on the (*18th*) of (*March, 1907.*)

PRESENT:

Hon. (*EDWARD S. CLINCH*),
Justice.

(*RICHARD WATSON*),
Plaintiff,

against

(*SHERWIN HOLMES*),
Defendant.

The minutes of the testimony herein having been duly written out by the direction of the court, because necessary to enable the court to duly hear and determine the same,

ORDERED, that the expense of attending and taking the testimony and furnishing the same to the court which was paid and incurred by the (*plaintiff*) be paid to the (*plaintiff*), and that the same be taxed as a disbursement herein by the Clerk of the court.

Enter,
(*E. S. C.*)
J. S. C.

MOTION FOR NEW TRIAL — EXECUTION.

FORM No. 265.

Order Denying Motion for New Trial.

At a Trial Term of the Supreme Court, held in and for the County of (*Westchester*,) at the Court House in the (*Town of White Plains*,) on the (22nd) day of (*October*, 1903.)

PRESENT:

Hon. (*WILLIAM J. GAYNOR*,)

Justice.

(*JOHN NICHOLSON*,)
Plaintiff,
against

(*THE CITY OF NEW ROCHELLE*,)
Defendant.

The issues in this action having come regularly on for trial before the Hon. (*William J. Gaynor*) and a jury, at a Trial Term of this court, on the (20th) day of (*October*, 1903,) and the same having been duly tried, and the jury having rendered a verdict in favor of the (*Plaintiff*) and against the (*Defendant*) for the sum of (\$2,500,) and the (*defendant*) having moved to set aside the verdict and for a new trial upon the ground that the same was against the weight of evidence and contrary to law, and on all the grounds as specified in Section 999 of the Code of Civil Procedure;

After hearing Mr. (*J. Rose, Rossiter*,) of counsel for the defendant, and in favor of the motion, and Mr. (*John Thompson*,) of counsel for the plaintiff, in opposition thereto;

NOW, on motion of (*William Davis*,) attorney for the defendant, it is

ORDERED, that the said motion be and the same hereby is denied.

(*W. J. GAYNOR*,)

[536]

J. S. C.

Order Denying.

FORM No. 266.

Order Denying Motion for New Trial.

At a Trial Term, (*Part XII*,) of the Supreme Court of the State of New York, held at the County Court House, in the County of (*New York*,) on the (*10th*) day of (*February*, 1904.)

PRESENT:

(Hon. (*FRANCIS M. SCOTT*,)
Justice.

<p>(<i>AUGUSTUS K. ARMAN</i>,) Plaintiff, against (<i>THE UNITED SURETY COM- PANY</i>,) Defendant.</p>	}
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This action having been tried before the Court and a jury, at a Trial Term of this Court, held in and for the County of (*New York*,) at the County Court House, in the (*Borough of Manhattan, City of New York*,) on the (*9th, 10th and 11th*) days of (*November*, 1903,) and the allegations and proofs on the part of the plaintiff having been heard and the defendant having moved to dismiss the complaint on the ground that the plaintiff had failed to sustain the cause of action set forth in the complaint, and had failed to sustain any cause of action set forth in the complaint, and had failed to sustain any cause of action, and (*the Court having suggested that it proceed to hear defendants allegations and proofs and the defendant's allegations and proofs having been heard, and thereafter the defendant having renewed his motion to dismiss, and having at that time also moved that a verdict in its favor be directed by the court, and the court having submitted the following questions to the jury.*

1. *Did the plaintiff, on August 5, 1898, take actual, open and public possession of the chattels pledged to him by the Busy Manufacturing Company?*

Order Denying.

2. *If the plaintiff did take such actual, open and public possession of the chattels, did he retain such possession openly and continuously until the Sheriff took possession of the chattels?*

3. *What damage did the plaintiff suffer, if he was owner of the property, through its taking by the Sheriff?)* And the Court having reserved decision on the motion to dismiss the complaint (*until the coming in of the verdict of the jury thereon, and the jury having answered "yes," to the first and second questions, and in answer to the third question having assessed the plaintiff's damage at \$4,611.20 and it having been stipulated in open court that the jury might be discharged and that upon the hearing of the motion to dismiss the complaint a general verdict be entered upon the minutes as if the jury were actually present,*) and thereafter such argument having been had and the court after due deliberation having by an order entered herewith on the 29th day of January, 1904, nonsuited the plaintiff, and plaintiff having duly excepted thereto, and a motion having been made by the plaintiff on the minutes of the judge who presided at the trial to set aside the direction nonsuiting the plaintiff and grant a new trial on the exceptions and Mr. (*Chauncey S. Truman,*) of counsel for plaintiff, having been heard in support of the motion, and Mr. (*William J. Griffith,*) of counsel for the defendant, in opposition thereto, it is

Ordered, that the said motion be and the same is hereby denied.

It is further ordered, that the plaintiff have sixty days after the entry of the judgment and service of notice thereof upon him or his attorneys in which to make and serve his case on appeal and that the plaintiff have sixty days stay of execution from such entry, and service of such notice.

It is further ordered, that the plaintiff's exception to said nonsuit be entered on the minutes of the trial by the Clerk at said Trial Term, Part XII.

Enter
(*F. M. SCOTT,*)
J. S. C.

Against Property.

FORM No. 267.

Execution Against Property.

THE PEOPLE OF THE STATE OF NEW YORK,

To the Sheriff of the County of (*New York*,) Greeting:

WHEREAS, judgment was rendered on the (10th) day of (*March*) one thousand (*nine*) hundred and (*five*,) in an action in the (*Supreme*) Court (*New York County*) between (*William Astor*,) plaintiff and (*Mitchell Randolph*,) defendant, in favor of the said (*William Astor*) against the said (*Mitchell Randolph*,) for the sum of (*fifteen hundred and sixty*) dollars (\$1,560), as appears to us by the judgment roll, filed in the office of the Clerk of the (*Supreme Court*,) County of (*New York*,)

AND WHEREAS, the said judgment was docketed in the office of the Clerk of your County on the (2nd) day of (*April*,) in the year one thousand nine hundred and (*five*,) and the sum of (*fifteen hundred and sixty*) dollars is now actually due thereon;

THEREFORE, WE COMMAND YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your County; or if sufficient personal property cannot be found, then out of the real property in your County belonging to such judgment debtor at the time when the said judgment was so docketed in the office of the Clerk of your County, or at any time thereafter, in whose hands soever the same may be, and return this execution, within sixty days after its receipt by you, to the Clerk of the (*Supreme Court*) County of (*New York*,).

WITNESS, Honorable (*James A. Blanchard*,) one of the *justices*, of said court, at the (*City of New York*,) the (*third*) day of (*April*,) one thousand nine hundred and (*five*,)

(*JAMES J. MAXWELL*,)

Attorney for Plaintiff,

(32 *Liberty Street*,)

(*Borough of Manhattan*,)

(*New York City*,)

SATISFACTION OF JUDGMENT.

FORM No. 268.

Release of Judgment — One of Several Defendants Jointly Liable.*
SUPREME COURT OF THE STATE OF NEW YORK,
(*Rensselaer*) County.

(*WALTER WING*,)
Plaintiff,
against
(*WILLIAM HENRY, JOSEPH
FENN, and THOMAS BENSON*,)
Defendants.

Judgment entered (*May
17th, 1901*) for
(\$1,000) in favor of
(*plaintiff*.)

JUDGMENT docketed and entered in the judgment book of the Clerk of the County of (*Rensselaer*,) on the (*seventeenth*) day of (*May*,) one thousand nine hundred and (*one*) for the sum of (*one thousand*) dollars damages and costs, in favor of the above-named plaintiff, and against the above-named defendants.

In consideration of (*one dollar*,) to (*me*) in hand paid, the receipt whereof is hereby acknowledged, by (*Thomas Benson*,) one of the defendants against whom judgment was recovered, as aforesaid, in the above-entitled action, does hereby release and discharge the said (*Thomas Benson*) from all and singular the above judgment, and the lien thereof, and all liability on account thereof, but without affecting the said judgment, or the liability thereon of the other defendants, or their right of action against any other joint debtor, or the right to take proceedings against such defendants, and I request the clerk of the court to release and discharge the said judgment of record as to the said defendant, (*Thomas Benson*) only, according to and as provided by sections 1942, 1943 and 1944 of the Code of Civil Procedure.

(*WALTER WING*.)

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On this (*tenth* day of *March*, in the year of our Lord one thousand nine hundred and (*five*) before me the undersigned per-

* See note on release of debt by partner, page 808.

By Attorney, One Of Firm.

sonally came and appeared (*Walter Wing*,) to me personally known and known to me to be the individual described in and who executed the foregoing instrument, and (*he*) acknowledged to me that he executed the same.

(JOHN DOW,)

Notary Public,
New York County.

FORM No. 269.

Satisfaction of Judgment — By Attorney, One of the Firm.*

SUPREME COURT,
(*Kings*) County.

(PEOPLE OF THE STATE OF
NEW YORK, upon the relation of
ANTHONY COLERIDGE,)

Plaintiff,

against

(WILLIAM W. GOODRICH, GAR-
RET G. GARRETSON, MICH-
AEL H. HIRSCHBERG, and
SAMUEL T. MADDOX,)

Defendants.

Judgment entered (*De-
cember 31, 1903*,) for
the sum of (\$950) in
favor of (*Samuel T.
Maddox*.)

STATE OF NEW YORK, }
County of (*Kings*), } ss.:

WHEREAS, a judgment was on the (31st) day of (*December*) in the year nineteen hundred and (*three*) recovered by (*Samuel T. Maddox*,) one of the defendants, against (*Anthony Coleridge and the People of the State of New York*,) plaintiffs in the above-entitled action, for the sum of (\$950) which judgment was entered on the (31st) day of (*December, 1903*,) in the judgment book, in the office of the clerk of said court, and said judgment has been wholly paid;

*See sect. 1260, Code.

More Than Two Years After Entry.

THEREFORE, satisfaction of said judgment is hereby acknowledged, and the clerk of said court is hereby authorized and directed to cancel and discharge the same.

(*BURR & WILSON,*)

Attorneys for Defendant.

By (*James Wilson.*)

STATE OF NEW YORK, }
County of (*Kings,*) } ss.:

On this (*seventeenth*) day of (*March, 1905,*) before me personally came (*James Wilson,*) one of the members of the firm of (*Burr & Wilson,*) to me known and known to me to be one of the attorneys for the (*defendant, Maddox,*) in the above-entitled action, and to be the individual mentioned in and who executed the above satisfaction of judgment, and he acknowledged to me that he executed the same as and for the act and deed of said firm.

(*RICHARD REED,*)

Notary Public,

(*Kings*) County.

FORM No. 270.

Satisfaction of Judgment—More Than Two Years After Entry.

SUPREME COURT,
(*New York*) County.

(*STEPHEN ANSON,*)
Plaintiff,
against

(*JOHN C. BALDWIN,*)
Defendant.

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

WHEREAS, a judgment was on the (*twenty-sixth*) day of (*April, 1900,*) recovered by the plaintiff against the defendant in the above-entitled action for the sum of (*four hundred*) dollars,

More Than Two Years After Entry.

which judgment was on the (26th) day of (April, 1900,) duly entered in the judgment book, in the office of the clerk of the above-named court, and the said judgment has been wholly paid;

THEREFORE, satisfaction of said judgment is hereby acknowledged, and the clerk of said court is authorized and directed to cancel and discharge the same.

(STEPHEN ANSON.)

STATE OF NEW YORK, }
County of (New York,) } ss.:

On the (27th) day of (March, 1905,) before me personally came (Stephen Anson,) to me known and known to me to be the (plaintiff) in the above-entitled action, and to be the same person described in and who executed the within satisfaction, and acknowledged to me that he executed the same.

(MORRIS CUMMINS,)

Notary Public,

(New York) County.

SUPPLEMENTARY PROCEEDINGS.*

FORM No. 271.

Affidavit to Obtain Order for Examination of Judgment Debtor.
(*CITY COURT OF THE CITY OF NEW YORK*).

In the Matter of
Supplementary Proceedings.
(*JOHN JONES*,)
Judgment creditor,
against
(*RICHARD ROE*,)
Judgment debtor.

STATE OF NEW YORK, }
County of (*New York*,) }

(*Ezra Williams*), being duly sworn, says, that he is (*the attorney for*) the above-named (*plaintiff*), the judgment creditor in this proceeding; that judgment was recovered in this action against the above-named (*defendant*), the judgment debtor herein in the (*City Court of the City of New York*) on the (*12th*) day of (*May*, 1904), for (\$1,054.40) damages and costs after the personal service of the summons upon said judgment debtor; that the said judgment was for more than twenty-five dollars; that the judgment roll in this action was filed in the office of the Clerk of (*the City Court of the City of New York*) on the (*12th*) day of (*May*, 1904); that a transcript of said judgment was duly filed, and said judgment was duly docketed in the office of the Clerk of the County of (*New York*) on the (*12th*) day of (*July*, 1904); that thereafter an execution upon said judgment against the property of the said judgment debtor was on the (*12th*) day of (*July*, 1904), duly issued out of the (*City Court of the City of New York*), which is a court of record, to the Sheriff of the County of (*New York*), where said judgment debtor (*then resided and still*

* See suggestions, p. 26.

Order For Examination.

resides) ; that the said sheriff has returned said execution (*wholly*) unsatisfied, and that the said judgment remains (*wholly*) unpaid, and that no previous application has been made for this order.

(EZRA WILLIAMS.)

Sworn to before me, this }
(20th) day of (June, 1904). }

(THEODORE RYAN),
Notary Public,
(New York) County, No. (326).

FORM No. 272.

Order for Examination of Judgment Debtor.

(CITY COURT OF THE CITY OF NEW YORK).

In the Matter of
Supplementary Proceedings.
(JOHN JONES,
(*Plaintiff*) and judgment creditor,

against

(RICHARD ROE,
(*Defendant*) and judgment debtor.

It appearing to my satisfaction, by the above affidavit of (*Ezra Williams*), the attorney for the (*plaintiff*), the judgment creditor in this proceeding, that judgment has been recovered in this action in the (*City Court of the City of New York*) against the above-named (*Richard Roe*), the judgment debtor herein on the (12th) day of (*May*, 1904), for the sum of (\$1,054.40); that said judgment was rendered upon a personal service of the summons herein upon the said judgment debtor; that the said judgment was for more than twenty-five dollars; that the judgment roll was filed in the office of the Clerk

Order For Examination.

of the (*City Court of the City of New York*), on the (*12th*) day of (*May*, 1904); that a transcript of said judgment was duly filed, and said judgment was duly docketed in the office of the Clerk of the County of (*New York*) on the (*12th*) day of (*May*, 1904); that thereafter an execution upon said judgment against the property of the said judgment debtor was on the (*12th*) day of (*July*, 1904), duly issued out of the (*City Court of the City of New York*), which is a court of record, to the Sheriff of the County of (*New York*), where said judgment debtor (*then resided and still resides*), and that such execution has been returned (*wholly*) unsatisfied, and that said judgment remains (*wholly*) unpaid, and that no previous application has been made for this order; I do hereby order and require (*Richard Roe*), the judgment debtor, to appear before me or one of the justices of this court,* at a Special Term (*to be held at chambers*), to be held at the (*Brown Stone*) court house, (*City Hall Park, Borough of Manhattan, City of New York*), on the (*26th*) day of (*June*, 1904), at (10) o'clock in the (*fore*)noon, and on such further days as the court or referee duly appointed shall name, to make discovery on oath concerning (*his*) property. And the said judgment debtor is hereby forbidden to transfer or make any other disposition of the property belonging to (*him*) not exempt by law from execution, or in any manner to interfere therewith, until further order in the premises.

Dated at (*Borough of Manhattan, City of New York*), on the (*20th*) day of (*June*, 1904).

(*WILLIAM ESSEX*),

Justice.

*[Or Arthur Jones, Esq., Referee, hereby appointed for such examination at his office No. 20 Park Row, New York City.]

Order Appointing Receiver.

FORM No. 273.

Order Appointing Receiver in Supplementary Proceedings.

(CITY COURT OF THE CITY OF NEW YORK.)

In the Matter of Supple-
mentary Proceedings.

(AUGUST R. ASTON,)
Judgment creditor,

against

(JOHN McSWEENEY,)
Judgment debtor.

Supplementary proceedings having been instituted upon the judgment in this action against (*John McSweeney*,) the judgment debtor in the above-entitled action, by an order made on the (10th) day of (*July*, 1905,) by Mr. Justice (*Conlan*,) directing the said (*John McSweeney*) to appear before him, or any judge of this court sitting at Special Term; and the said (*John McSweeney*) having been examined therein on oath concerning his property in pursuance of said order,

NOW, on filing the affidavit and order of examination herein and the evidence taken thereon; and a motion for the appointment of a receiver of the property of the said judgment debtor having been made at the close of the said examination in the presence of the said judgment debtor by (*Charles Colson*,) counsel for the judgment creditor, (*August R. Aston*,) I hereby

ORDER that (*Williard Fiske*,) Esq., be, and he hereby is, appointed receiver of all the debts, property, equitable interest, rights and interest in any action of the said (*John McSweeney*,) judgment debtor, that such receiver before he enter upon the execution of the said trust execute to the People of the State of New York a bond, with sufficient sureties, to be approved by me in the penalty of (*two hundred*) dollars, conditioned that he will faithfully discharge the duties of said trust, and file the said bond and this order with the Clerk of the (*City Court of the City of New York*,) as required by law, and that the said receiver upon

Order Appointing Receiver.

filing such bond be invested with all rights and powers as receiver according to law.

And I also order that the plaintiff, (*August R. Aston*,) recover the sum of (*thirty*) dollars costs and (*five*) dollars, his disbursements in these proceedings to be paid out of any money which has come or may come into his hands as receiver.

Dated, (*New York, July 26, 1905.*)

(*THEO. F. HASCALL,*)

J. C. C.

EXECUTION UNDER SEC. 1391, CODE OF CIVIL PROCEDURE.

Execution Against Income.

NOTE.—As a basis for the right to issue an execution under section 1391, two essential facts must be made to appear.

1. That the judgment was recovered wholly for necessities sold.
2. That no execution issued pursuant to this section is outstanding.

All applications under this section must be made upon regular notice to the judgment debtor, and where execution against the income of a trust fund is sought, to the trustee of such fund also.

Such execution cannot be had upon a judgment wholly for necessities obtained in another state. (*Newman v. Mortimer*, 98 App. Div. 64.) It may be had on judgments obtained prior to the amendment of the section. (*Myers v. Moran*, 113 App. Div. 427.)

FORM No. 274.

Notice of Application (Under Sec. 1391).

(CITY COURT OF THE CITY OF NEW YORK.)

(ARTHUR C. EASTON,)

Plaintiff,

against

(WILLIAM S. COOK,)

Defendant.

Sir:

PLEASE TAKE NOTICE, that upon the judgment roll in this action and upon the annexed affidavits of (*Herbert C. Morton*,) verified the (10th) day of (*June*, 1906,) and of (*Samuel Heyward*,) verified the 10th day of *June*, 1906, and all the proceedings heretofore had herein, the undersigned will apply at a Special Term of this court to be held at its Court House, (*No. 32 Chambers street, in the Borough of Manhattan, City of New York*) on the (18th) day of (*June*, 1906,) for an order directing that execution against ten per cent. of the wages, salary, debts, income from trust funds or profits due and owing or hereafter to become

Affidavit.

due and owing from (*the Merchants' National Bank of New York*) to (*William S. Cook*), the above-named defendant, and further directing that said execution remain a lien and a continuing levy on such wages, salary, earnings, debts, income from trust funds or profits until such execution and the expenses thereof shall be fully paid and satisfied, or until the same is modified, and for such other and further relief as may to the court seem just.

Dated, *New York*, June 10, 1906.

Yours, etc.,

(*LINDSAY & PALMER*),

Plaintiff's Attorneys.

(30 *Broad Street*),

(*New York City*.)

To

(*WILLIAM S. COOK*),

Attorney for Defendant.

(*Merchants' National Bank*.)

FORM No. 275.

Affidavit on Application for Execution (Sec. 1391, Code).

(*CITY COURT OF THE CITY OF NEW YORK*.)

(*ARTHUR C. EASTON*),

Plaintiff,

against

(*WILLIAM S. COOK*),

Defendant.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*HERBERT C. MORTON*), being duly sworn, says, that he is a counsellor-at-law associated with the attorneys for the plaintiff herein, and is familiar with this action.

That on the (*eighth*) day of (*May*, 1906,) a judgment was recovered in favor of the plaintiff and against the defendant for the

Affidavit.

sum of (*two hundred and twenty-seven and 54/100*) dollars in this action, which judgment was on the (*10th*) day of (*May*, 1906,) duly entered and docketed in the office of the Clerk of the (*City Court of the City of New York*;) and on the same day an execution on said judgment issued out of the (*City Court of the City of New York*, directed to the Sheriff of the County of *New York*, and the same was thereafter returned wholly unsatisfied, and the said judgment now remains wholly unpaid.

Deponent says that said judgment was wholly for necessities sold to the defendant by the plaintiff, to wit, (*the rent of an apartment, in the apartment house known as No. 40 Morningside avenue, in the Borough of Manhattan, city of New York, for the months of October and November, 1904, during which months the said apartment was leased by defendant from the plaintiff, and was actually used and occupied by defendant, William S. Cook, and his family,*) as more fully appears by the affidavit of (*Samuel Heyward,*) hereto attached.

Deponent further says that the defendant, (*William S. Cook,*) is employed as a (*paying teller*) by the (*Merchants' National Bank of New York,*) doing business at (*299 Broadway, in the Borough of Manhattan, City of New York,*) and receives a salary from said bank at the rate of (*\$3,000 per annum.*)

That said (*William S. Cook*) is entitled to receive, and there becomes due to the said (*Cook*) from the said (*Merchants' National Bank of New York*) each week in the way of salary, wages, debts, earnings or profits a sum in excess of twelve dollars, to wit, the sum of (*sixty* (\$60) dollars, and deponent avers that said (*Cook*) will receive a like sum each week from said (*bank*) as long as he remains in (*its*) employ. The source of deponent's knowledge as to the earnings, salary, wages, etc., of the said (*Cook*) is (*statements made by William S. Cook, in an examination relating thereto in proceedings supplementary to execution had herein pursuant to an order of this court, dated January 4, 1904, to which examination deponent refers.*)

Deponent submits that ten per cent. of the salary, wages, earnings, debts or income from trust funds or profits due and owing or which may hereafter become due and owing from the said (*Merchants' National Bank of New York*) to said (*William S. Cook,*) the judgment debtor, is properly applicable under section 1391 of the Code of Civil Procedure to the payment of the judgment above described; and deponent asks that an order be made

Affidavit.

herein directing that an execution issue against ten per cent. of said wages, salary, earnings, debts, income from trust funds or profits due and owing or hereafter to become due and owing from said (*Merchants' National Bank of New York to William S. Cook,*) and further directing that said execution remain a lien and a continuing levy on such wages, salary, earnings, etc., until said execution and the expenses thereof shall become fully satisfied and paid, or until the same is modified.

No previous application has been made for this or any similar relief, and no execution under section 1391 of the Code of Civil Procedure remains unsatisfied or outstanding against said (*William S. Cook,*) as deponent is informed by said Cook and verily believes.

(*HERBERT MORTON.*)

Sworn to before me, this }
(17th) day of June, 1906. }

(*WILLIAM WALKER,*)

Notary Public,
(*New York*) Co.

FORM No. 276.

Supporting Affidavit.

(*CITY COURT OF THE CITY OF NEW YORK.*)

(*ARTHUR C. EASTON,*)

Plaintiff,

against

(*WILLIAM S. COOK,*)

Defendant.

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*SAMUEL HEYWARD,*) being duly sworn, says, that he now is (*and during the months of October and November, 1904, was employed by Arthur C. Easton, the plaintiff above named, as super-*

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intendent of the apartment house, No. 40 Morningside Avenue, in the Borough of Manhattan, City of New York. That on or about September 25, 1904, William S. Cook leased from the plaintiff, through deponent as his agent, apartment No. 6, on the sixth floor of said apartment house for a term of one year, and the said William S. Cook, and his family lived in and occupied the said apartment as a home and residence during the months of October and November, 1904.)

(SAMUEL HEYWARD.)

Sworn to before me, this }
(10th) day of (June, 1906.) }

(WILLIAM WALKER,)

Notary Public,

(New York) County.

FORM No. 277.

Order Directing Issue of Execution Against Earnings.

At a Special Term of the (City Court of the City of New York,) held at (its Court House, No. 32 Chambers Street,) in (the Borough of Manhattan, City of New York,) on the (18th) day of (June, 1906.)

PRESENT:

Honorable (WILLIAM WADHAMS,)

Justice.

(ARTHUR C. EASTON,)

Plaintiff,

against

(WILLIAM S. COOK,)

Defendant.

It appearing to my satisfaction from the annexed affidavits of (Herbert Morton,) sworn to the (17th) day of (June, 1906,) and of (Samuel Heyward,) sworn to the (10th) day of (June, 1906,) that a judgment was entered and docketed in the office of the clerk of this court on the (10th) day of (May, 1906,) in favor of the plaintiff and against the defendant for the

Order.

sum of (*two hundred twenty-seven and 54/100*) dollars; that said judgment was wholly for necessities sold to the defendant, to wit, (*the rent of an apartment used as a dwelling by defendant and his family;*) that execution was duly issued on said judgment, directed to the Sheriff of the County of (*New York,*) and that said execution has been returned wholly unsatisfied,* and that said judgment remains wholly unpaid; and it further appearing that the judgment debtor, (*William S. Cook,*) is employed by (*the Merchants' National Bank of New York,*) doing business at (*299 Broadway, in the Borough of Manhattan, City of New York,*) and that the wages, salary, earnings, debts, or profits paid by said (*Merchants' National Bank*) to said (*William S. Cook*) amount to more than twelve dollars a week, to wit, the sum of (*sixty (\$60)*) dollars a week; and that no execution for the attachment of the wages, salary, earnings, income, etc., of said (*Cook*) over twelve dollars a week, pursuant to section 1391 of the Code of Civil Procedure, remains unsatisfied or outstanding;

NOW, on motion of (*Lindsey & Palmer,*) attorneys for the plaintiff, and after hearing, (*Vernon Clark,*) Esq., of counsel for the said judgment debtor, it is

ORDERED, that an execution issue herein directed to the Sheriff of the County of (*New York*) against the wages, salary, earnings, debts or profits now due and owing or hereafter to become due and owing to said (*William S. Cook*) by the said (*Merchants' National Bank of New York;*) and it is further

ORDERED, that on presentation of such execution by said sheriff to the said (*Merchants' National Bank of New York,*) said execution shall become a lien and a continuing levy upon ten per cent. of the amount due and owing, or which may hereafter become due and owing in the way of wages, salary, earnings, debts, income from trust funds or profits to the said judgment debtor, and said levy shall be a continuing levy thereon until said execution and the expenses thereof shall be fully paid and satisfied, or until the same is modified; and it is further

ORDERED, that said (*Merchants' National Bank of New York*) shall pay over to said sheriff under said execution, for the benefit of the plaintiff herein, ten per cent. of the whole sum due and owing, or which may hereafter become due and owing to said judgment debtor if the whole sum due and owing shall be more than twelve dollars a week.

Enter,

(W. W.,)

J. C. C.

Execution.

FORM No. 278.

Execution Against Earnings (Sec. 1391, Code).

THE PEOPLE OF THE STATE OF NEW YORK,

To the Sheriff of the County of (*New York*,) Greeting:

WHEREAS, a judgment was rendered on the (*eighth*) day of (*May*, 1906,) in an action in the (*City Court of the City of New York*,) between (*Arthur C. Easton*,) plaintiff, and (*William S. Cook*,) defendant, in favor of the said (*Arthur C. Easton*,) and against the said (*William S. Cook*,) for the sum of (*two hundred twenty-seven and 54/100*) dollars as appears to us by the judgment roll, filed in the office of the clerk of the (*City Court of the City of New York*,) which judgment was wholly for necessities sold, to wit, (*for the rent of an apartment used as a dwelling by the defendant and his family*,) and

WHEREAS, the said judgment was docketed in the office of the clerk of the County of (*New York*,) on the (*10th*) day of (*May*, 1906,) and the sum of (\$227 54/100) is now actually due thereon, and it appearing that (*the Merchants' National Bank of New York*) employs the said judgment debtor at a weekly salary of (*sixty*) dollars,

THEREFORE, pursuant to the order of this court herein dated (*June 17*, 1906,) we command you that you satisfy the said judgment out of the wages, earnings, salary, debts or profits due and owing or become due and owing, or which may hereafter become due and owing to said judgment debtor from said (*Merchants' National Bank of New York*,) by levying on an amount equal to ten per cent. of such wages, salary, earnings, debts or profits if the same shall amount to more than twelve dollars a week; this execution to be a continuing levy until this execution and the expenses thereof are fully satisfied and paid or until the same is modified.

WITNESS, the Honorable (*William Wadhams*,) one of the justices of this court at (*the Borough of Manhattan, City of New York*) on the (*18th*) day of (*June*, 1906.)

(*WILLIAM WADHAMS*,)

Justice.

NOTICE OF EXCEPTIONS.

FORM No. 279.

Notice of Exceptions to Decision (or Report of Referee).

SUPREME COURT,
(New York) County.

(FRANCES ELLIOTT HOLT),	}
Plaintiff,	
against	
(ELLEN A. ABBOT and FRANKLIN ABBOT),	
Defendants.	}

Sirs:

PLEASE TAKE NOTICE that the plaintiff herein excepts to the decision and findings (or to the report of *Franklin B. Thomas*, referee), filed herein in the office of the Clerk of (*the County of New York*,) on the (*25th*) day of (*February*, 1906,) as follows:

First: Said plaintiff excepts to the rulings and findings contained in (*the fourth alleged finding of fact and to every part thereof.*)

Second: Said plaintiff excepts to the rulings and findings contained in (*the sixth alleged finding of fact as follows, to wit:*

That the judgment therein referred to bearing date the 28th day of September, 1902, was "duly made and entered," and also that the covenant therein referred to was inserted in the deed therein referred to "for the purpose of establishing a uniform plan of restriction limiting the use of lots on 72nd street to private dwellings.")

Third: Said plaintiff excepts to so much of the rulings and findings contained in (*the fourth alleged conclusion of law as is set*

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forth under subdivisions 3 and 4 thereof, and to each and every part of said subdivisions.)

Dated, (New York, May 29, 1906.)

(EVAN O. ANDERSON,)

Attorney for (Plaintiff,)

(25 Broad Street,)

To (Manhattan, New York City.)

(JOHN K. RICHARDSON,) Esq.,

Attorney for (Defendant,)

To (43 Bond Street,)

(PETER J. DOOLING,) (Troy, New York.)

Clerk of the County of (New York.)

FORM No. 280.

Notice of Exceptions To Decision.

SUPREME COURT,

(New York) County.

(JOHN DOE,)

Plaintiff-Respondent.

vs.

(RICHARD ROE,)

Defendant-Appellant.

Sir:

TAKE NOTICE that the (*defendant, Richard Roe,*) excepts to the decision of the court filed in the above entitled action on the (30th) day of (*June, 1906,*) to the findings of fact and conclusions of law made by the court in the proposed decision prepared by the plaintiff; to the refusal of the court to find facts and conclusions of law as requested by defendant in the following particulars:

I. To so much of the tenth finding of fact as finds that . . . on the ground that there is no evidence to support same.

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II. To the eleventh finding of fact upon the ground that there is no evidence to support same.

III. To the first conclusion of law upon the ground that there is no evidence to support same, and that it is contrary to and against the weight of evidence.

IV. To the seventh conclusion of law upon the ground that there is no evidence in the case upon which to base such a conclusion of law.

V. To the refusal of the court to find as requested in the proposed findings of fact and conclusions of law submitted by the defendant, Richard Roe, as follows:

VI. The refusal to find as requested in paragraph III of the findings of fact submitted by him.

VII. The refusal to find as requested in paragraph IV. of the findings of facts submitted by him.

VIII. Said defendant also excepts to the refusal of the court to make the conclusions of law as requested by paragraph I of the conclusions of law submitted by him to the court.

IX. Said defendant further excepts to the conclusions of law contained in the decision and to the decision itself on the grounds that facts have not been found to support said decision and conclusions of law.

Dated, (*July 6, 1906,*)

(*E. SMITH,*)

Attorney for (*Defendant.*)

To (*PETER J. DOOLING,*)

Clerk of the Supreme Court, (*New York*) County.

(*JAMES ROLLINS,*)

Attorney for (*Plaintiff.*)

NOTICES OF APPEAL.

FORM No. 281.

Notice of Appeal to Appellate Division—From Judgment, Trial
Term.

SUPREME COURT,
(*New York*) County.

(<i>HARRISON GRAVES</i> ,)	}
Plaintiff,	
against	
(<i>NATIONAL SOAP COMPANY</i> ,)	
Defendants.	

Sirs:

PLEASE TAKE NOTICE that the (*defendant*) in the above entitled action hereby appeals to the Appellate Division of the Supreme Court, (*First*) Judicial Department, from the judgment of the Supreme Court, (*New York*) County, entered in the office of the Clerk of the County of (*New York*,) on the (*13th*) day of (*October*, 1906,) in favor of the (*plaintiff*) and against the (*defendant*) for the sum of (*one thousand and eighty-three dollars and seventy-eight cents*) and from each and every part of said judgment, and also from an order entered in said Clerk's office on the (*24th*) day of (*October*, 1906,) denying a motion to set aside the verdict and for a new trial of the said action, and from each and every part of said order.

Dated, New York, (*October 31*, 1906.)

(*ALBERT CHESTER*,)

Attorney for (*defendant*,)

(*2938 Broadway*,

New York City.)

To

(*PAUL STARR*,) Esq.,

Attorney for (*plaintiff*).

(*THOMAS L. HAMILTON*,) Esq.,

Clerk (*New York*) County.

From Judgment — Special Term.

FORM No. 282.

Notice of Appeal to Appellate Division — From Judgment, Special Term.*

SUPREME COURT,
(*New York*) County.

(*EMMA G. WELLS, individually and as Executrix and Trustee under the last Will and Testament of Fred Wells, deceased, Harry B. Wells, and Albert H. Ehrich,*) Plaintiffs,
against

(*EDWARD W. WILLIAMS, individually and as Executor and Trustee under the last Will and Testament of Fred Wells, deceased, The Fred Wells Company, James Thomas, Frank Luding, and Joseph Hirsch,*) Defendants.

Sirs:

PLEASE TAKE NOTICE, that the (*defendants, Edward W. Williams, individually and as executor and trustee under the last Will and Testament of Fred Wells, deceased, and Frank Luding,*) hereby appeal to the Appellate Division of the Supreme Court, in and for the (*First*) Department, from the judgment or decree entered herein in the office of the Clerk of the County of (*New York*) on the (*30th*) day of (*December, 1905,*) and from each and every part thereof.

Dated, (*New York, January 12, 1906.*)

Yours, etc.,

(*JOHN DOOLITTLE,*)

Attorney for (*Edward W. Williams,*
Individually, etc.,

To 25 William Street, New York City.)

Messrs. (*JAMES, BOSWORTH & COLE,*)

Attorneys for (*Plaintiffs,*)

(*32 Liberty Street, New York City.*)

(*PETER J. DOOLING,*) Esq.,

Clerk of (*New York*) County.

* When a party desires to appeal from a part only of the judgment, he must specify the part appealed from. An appeal brings up for review only such portions of the judgment as are specified in the notice of appeal.

From Judgment Dismissing Complaint.

FORM No. 283.

Notice of Appeal to Appellate Division — From Judgment Dismissing Complaint.

SUPREME COURT,
(*New York*) County.

(*THE BANK OF NEW YORK*,)
Plaintiffs,
against

(*JOHN HOWELL and WALTER
READ*,)
Defendants.

Sirs:

PLEASE TAKE NOTICE, that the above-named plaintiff hereby appeals to the Appellate Division of the Supreme Court of the State of New York for the (*First*) Department, from the decision herein, dated the (*1st*) day of (*July*, 1903,) and entered in the office of the clerk of this court on the (*30th*) day of (*October*, 1903,) and from the judgment entered herein on the (*30th*) day of (*October*, 1903,) in the office of the Clerk of the County of (*New York*,) dismissing the complaint of the plaintiff herein and for (*two hundred and sixty and 96/100* (\$260.96)) dollars costs, and from the whole and each and every part of said decision and judgment.

Dated, (*New York, November, 28th*, 1903.)

Yours, etc.,

(*STEIN & RUSHTON*,)

Attorneys for Plaintiff,

(*40 Wall Street,*
New York City.)

To

Messrs. (*BOSWORTH, MERRALL & YATES*,)

Attorneys for Defendants.

(*THOMAS L. HAMILTON*,) Esq.,

Clerk of the County of (*New York*.)

From Order.

FORM No. 284.

Notice of Appeal to Appellate Division — From Order.

SUPREME COURT,
County of (*New York*.)

(*RICHARD WILSON and ANNA
WILSON,*)

Plaintiffs,

against

(*RANDOLPH PERRY, KARL
HATCH, THE NEW COAL COM-
PANY and FREDERICK
CARR.*)

Defendants.

Sirs:

YOU WILL PLEASE TAKE NOTICE, that the (*plaintiffs*) above-named hereby appeal to the Supreme Court, Appellate Division, (*First*) Department, from the order made and entered in the above-entitled action bearing date the (*9th*) day of (*February*, 1905,) and signed by the Hon. (*Francis M. Scott*), Justice, which said order was filed in the office of the Clerk of the County of (*New York*) on the (*9th*) day of (*February*, 1905,) and this appeal is taken from each and every part of said order.

Dated, (*March 3*, 1905.)

Yours, etc.,

(*JAMES & WEEKS,*)

Attorneys for (*Plaintiffs*),

(*32 Liberty Street,*)

(*New York City.*)

To

(*DAVIS PIERCE,*)

(*Attorney for Defendants Randolph Perry, Karl Hatch,
The New Coal Company, and Frederick Carr.*)

(*THOMAS L. HAMILTON,*) Esq.,

Clerk of the County of (*New York*.)

From Part Of Order.

FORM No. 285.**Notice of Appeal to Appellate Division — From Part of Order.**NEW YORK SUPREME COURT,
(*New York*) County.(EDWARD LEE and FRANK
LAWRENCE,)

Plaintiffs,

against

(THE AMERICAN HAT COM-
PANY,)

Defendants.

Sirs:

PLEASE TAKE NOTICE, that the (*plaintiffs*) in the above-entitled action hereby appeal to the Appellate Division of the Supreme Court of the State of New York in the (*First*) Department from that part of the order made in the above-entitled action and entered in the office of the Clerk of the County of (*New York*), on the (28th) day of (*February*, 1906,) which (*vacates so much of the order made herein by Hon. Henry A. Gildersleeve, one of the Justices of this Court, on the 1st day of February, 1906, as required the defendant The American Hat Company, and its President, to be examined before trial, and the deposition of said Henry Jones to be taken and the books and papers of said American Hat Company, specified in said order, to be produced at such examination.*)

Dated, (*March 5, 1906.*)

Yours, etc.,

(*NATHAN BUDD,*)Attorney for (*Plaintiffs*)-Appellants.

To

(*AUSTIN BLOCK,*) Esq.,Attorney for (*Defendants*)-Respondents.(*PETER J. DOOLING,*) Esq.,Clerk of the County of (*New York.*)

From Surrogate's Decree.

FORM No. 286.

Notice of Appeal to Appellate Division — From a Decree of the
Surrogate's Court.SURROGATE'S COURT,
(*New York*) County.

<p>(IN THE MATTER</p> <p style="margin: 10px 0;">of</p> <p>The estate of THOMAS P. CARD,</p> <p style="margin: 0 0 0 40px;"><i>deceased.</i>)</p>

Sirs:

PLEASE TAKE NOTICE, that the (*Respondent William Watson*) hereby appeals to the Appellate Division of the Supreme Court, (*First*) Department from the order and decree herein, (*revoking the letters testamentary issued to respondent and removing him as trustee,*) which order and decree was made and entered herein in the office of the Clerk of this Court on the (*9th*) day of (*February, 1907;*) and that said (*respondent*) appeals from the whole and every part thereof.

PLEASE TAKE FURTHER NOTICE, that the respondent also appeals to the Appellate Division of the Supreme Court (*First*) Department from (*the order of injunction made and entered herein in the office of the Clerk of this Court on September 6, 1906,*) and from each and every part of said order.

PLEASE TAKE FURTHER NOTICE, that the respondent also appeals to the Appellate Division of the Supreme Court, (*First*) Department from the order (*of reference*) made and entered herein in the office of the Clerk of this Court on (*December 8, 1906,*) and from each and every part of said order.

Dated, (*April 6, 1907.*)

Yours, etc.,

(FRANCIS ACKERMAN,)

Attorney for (*respondent,*)(*2 B'way, New York City.*)

To

Messrs. (*RALSTON & RICE,*)Attorneys for (*petitioners.*)

DANIEL J. DOWDNEY,

Clerk of the Surrogate's Court, (*N. Y. Co.*)

From Surrogate's Order.

FORM No. 287.

Notice of Appeal to Appellate Division — From Surrogate's Order.

SURROGATE'S COURT,

(New York) County.

In the Matter

of

(The Probate of a Paper Alleged to
be the last Will and Testament of
DAVID GOLDSTEIN.)

Sirs:

YOU WILL PLEASE TAKE NOTICE that (*Alexander Brown*) hereby appeals to the Appellate Division of the Supreme Court, (*First*) Department, from the order made and entered in the above-entitled matter by the Hon. (*Abner C. Thomas*), Surrogate, and bearing date the (*15th*) day of (*October*, 1906,) which order (*substituted Messrs. Park & Jones in the place and stead of Alexander Brown as attorneys for Louis Goldstein and Martin Goldstein*) and this appeal is taken from each and every part of said order.

Dated, (*November 14th*, 1906.)

Yours, etc.,

(JAMES, BOSWORTH & COLE,)

Attorneys for (*Appellant*),(32 *Liberty Street*,*New York City*.)To Messrs. (*PARK & JONES*),Attorneys for (*LOUIS and MARTIN GOLDSTEIN*),(52 *Broadway*, *New York City*.)

(DANIEL J. DOWDNEY,)

Clerk of the Surrogate's Court,

County of (*New York*.)

From Interlocutory Judgment.

FORM No. 288.**Notice of Appeal from Interlocutory Judgment.**

NEW YORK SUPREME COURT,
(*New York*) County.

(ALBERT JAMES,)	}
Plaintiff,	
against	
(WILLIAM SMITH,)	
Defendant.	

Sir:

YOU WILL PLEASE TAKE NOTICE that the (*defendant*) above named hereby appeals to the Appellate Division of the Supreme Court of the State of New York in and for the (*First*) Department, from the interlocutory judgment made and entered in the above entitled action in the office of the Clerk of the County of (*New York*) on the (*3rd*) day of (*December*), 1906 (*overruling*) the demurrer interposed by (*plaintiffs*) to the (*counterclaim set forth in the answer of the defendant*); and this appeal is taken from each and every part of said judgment.

Dated (*New York, December 4, 1906.*)

Yours, etc.,
(FRANK WILSON,)
Attorney for (*plaintiff*),
Office and P. O. Address,
(*3 Wall*) Street,
(*New York City.*)

To

(JAMES HOLT,) Esq.,
Attorney for (*defendant*),
(*4 Broadway, New York City.*)
(PETER J. DOOLING,)
Clerk of the County of (*New York.*)

To Appellate Term From N. Y. City Court.

FORM No. 289.

Notice of Appeal to Supreme Court, Appellate Term — From Judgment of the City Court.

CITY COURT OF THE CITY OF NEW YORK.

(JAMES GEIST,) }
Plaintiff-(Respondent,) }

vs.

(FRANCIS BATES,) }
Defendant-(Appellant.) }

Sir:

PLEASE TAKE NOTICE, that the (*defendant*) in the above-entitled action hereby appeals to the Appellate Term of the Supreme Court of the State of New York in the First Department, from the judgment entered herein in the office of the Clerk of the City Court of the City of New York on the (10th) day (*December*, 1906,) in favor of the (*plaintiff*) and against the (*defendant*) for the sum of (*eight hundred and seventy-six* 24/100) dollars (\$876.24), and from the whole of said judgment, and each and every part thereof.

Dated, (*New York*, December 22, 1906.)

(ELMER VANDERBILT,)

Attorney for (*Defendant*),

O. & P. O. Address,

(32 *Liberty Street*,
New York City.)

To (WILLIAM RUSSELL, Esq.,)

Attorney for (*Plaintiff*)(10 *Wall Street*,
N. Y. City.)

(THOMAS F. SMITH, Esq.,)

Clerk of the City Court of the City of New York.

Undertaking.

FORM No. 290.

Undertaking on Appeal from Judgment to Stay Execution.

NEW YORK SUPREME COURT,
(*Dutchess*) County.

(*ANDREW FRENCH,*)
Plaintiff-Respondent,

against

(*THEODORE DAVIS,*)
Defendant-Appellant.

WHEREAS, on the (15th) day of (*January, 1905,*) in the (*Supreme*) Court of (*the State of New York, Dutchess*) County, the above-named respondent recovered a judgment against the above-named appellant for (*eleven thousand two hundred (\$11,200)*) dollars damages and costs;

And the above-named appellant feeling aggrieved thereby intends to appeal therefrom to the (*Supreme Court of the State of New York, Appellate Division, Second Department:*)

NOW, THEREFORE, we, (*James Conlan,*) residing at (*315 West 51st street,*) in (*the Borough of Manhattan, City of New York,*) and (*Joseph Murphy,*) residing at (*259 West 68th street,*) in (*the Borough of Manhattan, City of New York,*) do hereby jointly and severally undertake that if the said judgment so appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the sum recovered or directed to be paid by the said judgment or the part thereof as to which it is affirmed; and that the said appellant will pay all costs and damages which may be awarded against him on the appeal, not to exceed the sum of five hundred (500) dollars.

Dated, (*June 15th, 1905.*)

Signed and sealed by:

(*JAMES CONLAN,*)
(*JOSEPH MURPHY.*)

Undertaking.

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

(*JAMES CONLAN*,) being duly sworn, says, that he is a resident of and a (*householder*) within the State of New York, and is worth the sum of (*twenty thousand*) (\$25,000) dollars over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

(*JAMES CONLAN*.)

Sworn to before me, this }
 (15th) day of (*June*, 1905.) }

(*ROBERT JOHNSON*,)

Notary Public,

(*New York*) County.

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

(*JOSEPH MURPHY*,) being duly sworn, says, that he is a resident of and a (*freeholder*) within the State of New York, and is worth the sum of (*twenty thousand*) (\$25,000) dollars over all the debts and liabilities which he owes or has incurred and exclusive of property exempt by law from levy and sale under an execution.

(*JOSEPH MURPHY*.)

Sworn to before me, this }
 (15th) day of (*June*, 1905.) }

(*ROBERT JOHNSON*,)

Notary Public,

(*New York*) County.

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

I certify that on this (15th) day of (*June*, 1905,) before me personally appeared (*James Conlan and Joseph Murphy*,) to me known and known to me to be the individuals described in, and who executed the foregoing undertaking, and they severally duly acknowledged to me that they executed the same.

(*ROBERT JOHNSON*,)

Notary Public,

(*New York*) County.

Notice.

FORM No. 291.

Notice of Exception to Sureties.

SUPREME COURT,
(*New York*) County.

(<i>WALTER WILSON,</i>)	}
Plaintiff,	
against	
(<i>THOMAS JOHNSON,</i>)	
Defendant.	

Sir:

PLEASE TAKE NOTICE that the (*plaintiff*) excepts to the sufficiency of the (*sureties*) in the undertaking on appeal to the Appellate Division herein filed in the office of the Clerk of the County of (*New York*) on the (*2nd*) day of (*January, 1907,*) and further he excepts to the form and sufficiency of the undertaking.

Dated, (*New York, February 11, 1907.*)

(*RALSTON & RICE,*)

(*Plaintiff's*) Attorneys,

(*32 Liberty street,*

New York.)

To

(*FRANCIS ACKERMAN,*)

Attorney for (*Defendant,*)

(*No. 3 Broadway,*

New York City.)

Notice Of Justification.

FORM No. 292.

Notice of Justification of Sureties in Undertaking on Appeal.

SUPREME COURT,
(*New York*) County.

(<i>WALTER WILSON</i>),	}
Plaintiff,	
against	
(<i>THOMAS JOHNSON</i>),	
Defendant.	

Sir:

PLEASE TAKE NOTICE, that the sureties upon the undertaking given by the (*appellant*) on his appeal to the Appellate Division from the judgment entered in the above entitled action, which was filed in the office of the clerk of the County of (*New York*) on the (*2d*) day of (*January*, 1907,) will justify before one of the justices of this court, sitting at (*Part 2*), Special Term thereof, County Court House, (*Borough of Manhattan, City of New York*), on the (*9th*) day of (*February*, 1907,) at (*11*) o'clock in the forenoon of that day.

Dated, (*New York, February 13, 1907.*)

(*FRANCIS ACKERMAN*),

Attorney for (*Defendant.*)

(*No. 3 Broadway,*
New York.)

To

(*RALSTON & RICE*),

Attorneys for (*Plaintiff*),

(*32 Liberty street,*
New York.)

Notice Of Approval.

FORM No. 293.

Notice of Approval of Undertaking upon Justification of Sureties
upon Appeal.SUPREME COURT,
(*New York*) County.(WALTER WILSON,) }
Plaintiff, }
against }(THOMAS JOHNSON,) }
Defendant. }

Sir:

PLEASE TAKE NOTICE, that the sureties in the undertaking on appeal to the Appellate Division herein, filed herein on (*January 29, 1907,*) to whose sufficiency and to the sufficiency of which undertaking the plaintiff excepted, have justified and the said undertaking was this day approved by the Hon. (*Edward B. Amend,*) upon said justification before him at (*Part 2,*) Special Term of this court, and as so approved was this day filed in the office of the Clerk of the County of (*New York.*)

Dated, (*February 19, 1907.*)

(FRANCIS ACKERMAN,)

Attorney for (*Defendant,*)(*No. 3 Broadway,*
New York.)

To

Messrs. (*RALSTON & RICE,*)Attorneys for (*Plaintiff,*)(*32 Liberty street,*
New York.)

FORM No. 294.

Notice of Argument — Court of Appeals.

COURT OF APPEALS OF THE STATE OF NEW YORK.

(JOHN JONES), Plaintiff-(<i>Appellant</i>), against (JOHN DOE), Defendant-(<i>Respondent</i>).	}
--	---

Sir:

PLEASE TO TAKE NOTICE, that the appeal in the above action will be brought on for argument before the judges of this Court, at a term thereof, to be held on the (10th) day of (*October*, 1906,) at the Court Room, in the Capitol, in the City of Albany, at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Dated, the (12th) day of (*October*, 1906).

Yours, etc.,

(WILLIAM REILLY),
Attorney for (*Plaintiff-Appellant*),
(No. 27 Pine Street),
(Borough of Manhattan),
(City of New York).

To

(EZRA WILLIAMS), Esq.,
Attorney for (*Defendant-Respondent*),
(No. 15 William Street),
(New York City).

Appellate Division.

FORM No. 295.

Notice of Argument — Appellate Division.

SUPREME COURT — Appellate Division,
(First) Department.

(JOHN JONES,) } Plaintiff-(<i>Appellant</i>),

against

(JOHN DOE,) } Defendant-(<i>Respondent</i>).
--

Sir:

PLEASE TAKE NOTICE, that the appeal in the above-entitled action will be brought on for argument before this court, at a term thereof to be held at its Court House, in the (*Borough of Manhattan, City of New York*), on the (6th) day of (*June, 1906*), at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Dated, the (20th) day of (*May, 1906*).

Yours, etc.,

(WILLIAM REILLY),
Attorney for (*Plaintiff-Appellant*),
(*No. 27 Pine Street*),
(*Borough of Manhattan*),
(*City of New York*).

To

(EZRA WILLIAMS), Esq.,
(*No. 15 William Street*),
(*Borough of Manhattan*),
(*City of New York*).

MORTGAGE FORECLOSURE.

Note.

See

- (Notice. Form No. 22, p. 214.)
- (Summons Form No. 21, p. 212.)
- (*Lis pendens* Form No. 23, p. 215.)
- (Complaints. Forms Nos. 44, 45, pp. 243, 249.)
- (Outline of action to foreclose mortgage, p. 36.)

In preparing a motion for the referee to compute the amount due, the attorney should be careful to ascertain whether his property is to be sold in one parcel or not. If there is any reason why the property should be particularly sold either in one parcel or in separate parcels, mention of that fact should be made in his affidavit upon application for an order of reference, and that the order of reference contain, after the usual clauses in reference to computing the amount due, the following: "That the referee report as to whether the premises can or should be sold in one parcel (or otherwise as the particular case may require)."

FORM No. 296.

Notice of Motion for Appointment of Referee to Compute.
SUPREME COURT,
(*New York*) County.

(<i>COMMERCE BANK</i>),	}
Plaintiff,	
against	
(<i>JOHN W. McKEE</i>) and others,	
Defendants.	

Sirs:

PLEASE TAKE NOTICE, that on the (*third*) day of (*October*, 1901,) at the opening of court, or as soon thereafter as counsel can be heard, we shall apply to this court at a Special Term,

Notice Of Motion.

(*Part I.*) thereof, to be held at the County Court House in (*the Borough of Manhattan, City of New York,*) for an order referring it to some suitable person as referee to ascertain and compute the amount due the plaintiff upon the bond and mortgage to foreclose which this action is brought [and to take proof of the facts and circumstances stated in the complaint and to examine the plaintiff or its agent on oath as to any payments which may have been made, and to compute the amount due on said mortgage] preparatory to the application for judgment of foreclosure and sale.

(Bracketed portion to be inserted when there are infants or absent defendants).

(When fictitious parties have been named in pleadings, add)

And for an order amending the summons, complaint, notice of pendency of action and all other papers heretofore served or filed herein by striking from each of said papers the names of *John Doe* and *Richard Roe*, parties defendant.

Yours, etc.,

(*WHITE & CURTIN,*)

Attorneys for Plaintiff,

(*120 Broadway,*)

(*New York City.*)

To

(*WILLIAM KIMBALL,*) Esq.,

Attorney for Defendants,

(*66 Broadway,*)

(*New York City.*)

Affidavit.

FORM No. 297.

Affidavit on Motion for Appointment of Referee to Compute (Affidavit of Regularity).

NEW YORK SUPREME COURT,
County of (*New York*.)

(*COMMERCE BANK OF NEW YORK*),

Plaintiff,

against

(*JOHN W. McKEE*) and others,
Defendants.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM HUDSON*), being duly sworn, says, that he is an attorney at law, associated with (*White & Curtin*), attorneys for the plaintiff in the above-entitled action, and that he has charge of the conduct of said action; that the complaint in said action was filed in the office of the clerk of the County of (*New York*), on the (*8th*) day of (*June*, 1903).

That this action is brought to foreclose a mortgage upon real property situate in the (*City*) and County of (*New York*), executed by defendant, (*John W. McKee*), and (*Katherine D. McKee, his wife*), to the (*Commerce Bank of New York*), to secure the principal sum of (*eighteen thousand* (\$18,000)) dollars, of which there is now due the sum of (*fifteen thousand* (\$15,000)) dollars, together with interest thereon from (*December 30*, 1902,) at the rate of (*six*) per centum per annum; that the said mortgage is dated on the (*27th*) day of (*August*, 1897,) and was recorded in the office of the (*Register*) of the County of (*New York*), on the (*6th*) day of (*October*, 1897,) at (*one*) o'clock (20) minutes (*P.*) M., in Liber (206) of Mortgages, (*Section 10*) page 285.

That on the (*8th*) day of (*June*, 1903,) a notice of the pendency of this action, containing the names of the parties thereto, the object of the action, a description of the property in that county affected thereby, the date of the mortgage, and the purpose thereof, and the time and place of recording the same was

Affidavit.

filed in the office of the Clerk of the County of (*New York*,) that being the county in which the mortgaged premises are situated, and that since the filing of said notice the complaint in this action has not been amended by making any change in the parties to the action, nor so as to affect their property not described in the original complaint, nor so as to extend the claim of the plaintiff against the mortgaged premises.

That all of said defendants are of full age, and none of the defendants who have not appeared are absentees.

That the defendant (*John W. McKee*) is not a necessary party in this action, said (*John W. McKee*) having been named in the summons and complaint as a party defendant for the reason that he was a judgment creditor whose lien was prior, and the said judgment in favor of said (*McKee*) having been satisfied and discharged of record on June 15, 1903, subsequent to the commencement of this action, and that plaintiff requests that an order be entered striking his name as a party hereto from the summons and complaint and notice of pendency of this action.

Deponent further says that more than twenty days have elapsed since the due service of the summons and complaint herein on all the defendants, as aforesaid except the said (*John W. McKee*) as appears by the affidavit of service and admission of service thereof and notices of appearance hereto annexed.*

That all the defendants named in the summons have appeared except the said (*John W. McKee*,) and all said defendants have waived the service of all papers herein except notice of sale and proceedings to obtain surplus moneys as appears by their notices of appearance hereto attached.

That the time to answer or demur to the complaint has expired as to all the defendants, and that no answer or demurrer has been received.

No previous application has been made for the relief herein asked for.

(*WILLIAM HUDSON.*)

Sworn to before me, this }
(20th day of (*July*, 1903.)) }

(*RICHARD WHITE*,)

Notary Public (*N. Y.*) Co.

* Some practitioners specify which of the defendants have been served, which have served notices of appearance and by what attorney or attorneys they appeared, and on what date each notice of appearance was served. Where there are a large number of defendants this practice is advisable as a matter of convenience.

Order.

FORM No. 298.

Order of Reference to Compute Amount Due.

At a Special Term of the Supreme Court held at the County Court House, in (*the Borough of Manhattan, City of New York,*) on the (21st) day of (*April, 1905.*)

PRESENT:

Hon. (*GEO. C. BARRETT,*)

Justice.

(*THE EMIGRANTS' INDUSTRIAL SAVINGS BANK,*)

Plaintiff,

against

(*EMILE RAMEL and HENRIETTA RAMEL,*) his wife, and others,

Defendants.

On the summons and verified complaint already on file herein, and on reading and filing the proofs of service, and notices of appearance hereto annexed, showing that the whole amount secured by the mortgage described in the complaint has become due, and that all the defendants have been duly personally served with the summons and complaint herein within this State or have voluntarily appeared herein more than twenty days since, and on reading and filing the affidavit of (*Charles B. Hawkes*) verified the (11th) day of (*April, 1901,*) also hereto annexed, showing that none of the defendants are infants or absentees, and that none of them has answered or demurred to the complaint herein, and that the time for all of them to do so has expired; that a notice of the pendency of this action was duly filed in the office of the Clerk of the County of (*New York,*) the county in which the mortgaged premises are situated more than twenty days since, and at or after the time of filing the complaint as required by law and that since the filing of said notice, the summons and complaint herein have not been amended by making new parties to the action or so as to affect premises not described in said notice, and on all the pleadings and proceedings herein and on motion of (*William C. Orr,*) Attorney for the plaintiff, it is

Oath.

ORDERED, that the plaintiff have judgment for the relief demanded in the complaint.

IT IS FURTHER ORDERED, that this action be referred to (*John Jones*,) Esq., counsellor at law, to* compute the amount due to the plaintiff on the bond and mortgage mentioned in the complaint, and that on the coming in of the referee's report, the plaintiff have the usual judgment of foreclosure and sale and for costs and an extra allowance without further notice.

FORM No. 299.

Oath of Referee.

SUPREME COURT,
County of (*New York*.)

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK*,)

Plaintiff,

against

(*EMILE RAMEL*) and others,
Defendants.

STATE OF NEW YORK, }
County of (*New York*.) } ss.:

I, (*John Jones*,) the referee, appointed by an order of this court, made and entered in the above-entitled action, and bearing date the (*eleventh*) day of (*April*, 1905,) to ascertain and compute the amount due to the plaintiff upon the bond and mortgage upon which this action was brought, do solemnly swear that I will faithfully and fairly determine the question so referred to me, and make a just and true report thereon according to the best of my understanding.

(*JOHN JONES*.)

Sworn to before me, this (*12th*) }
day of (*April*, 1905.) }
(*JOHN SMITH*,)

Notary Public, (*New York*) County.

* NOTE.— If any defendants are infants or absentees the order should read:

"To take proof of the facts and circumstances stated in the complaint, and to examine the plaintiff or his agent on oath as to any payments which have been made and to, etc."

Report Of Referee.

FORM No. 300.

Report of Referee to Compute.

SUPREME COURT,

County of (*New York.*)

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK,*)

Plaintiff,

against

(*EMILE RAMEL,*) and others,
Defendants.

To the Supreme Court:

In pursuance of an order of this court, made and entered in the above-entitled action and dated the (11th) day of (*April*, 1905,) whereby it was referred to the undersigned as referee to ascertain and compute the amount due to the plaintiff upon and by virtue of the bond and mortgage upon which this action was brought,

I, (*John Jones,*) the referee in the said order named, do report, that before proceeding to hear the testimony I was first duly sworn faithfully and fairly to determine the question referred to me, and to make a just and true report thereon, according to the best of my understanding, that I have computed and ascertained the amount due to the plaintiff upon and by virtue of the said bond and mortgage, and that I find and accordingly report that there is due to the plaintiff for principal and interest on the said bond and mortgage,* at the date of this my report, the sum of (*fifteen thousand five hundred and twenty-eight 75/100*) dollars.

SCHEDULE A., hereunto annexed, contains a schedule of the documentary evidence introduced before me, and shows the amounts due for principal and interest respectively, the period of the computation of the interest and its rate.

Dated, (*April 12*, 1905.).(*JOHN JONES,*)

Referee.

* If anything is due for taxes, insurance, assessments, etc., this should also be included as follows:

“and for taxes, assessments and insurance due and unpaid.”

unless by the terms of the mortgages on default in payment thereof these are made a part of the principal and secured by the mortgage lien.

Report Of Referee.

SCHEDULE A.

Abstract of Documentary Evidence.

One bond bearing date the (*first*) day of *June*, 1900, made and executed by (*Emile Ramel*) to the (*Emigrants' Industrial Savings Bank*) in the penal sum of (*thirty thousand*) dollars, to secure the payment of the sum of (*fifteen thousand*) dollars, on the *first* day of *January*, 1905, with interest at the rate of 5 per cent. per annum. Marked Exhibit A.

One mortgage of even date with said bond, made and executed by (*Emile Ramel*) and (*Clara, his wife,*) to (*The Emigrants' Industrial Savings Bank*) as collateral security for the payment of the amount mentioned in the condition of the said bond, acknowledged the (*first*) day of (*June*, 1904,) and recorded in the office of the (*Register*) of (*the City and*) County of (*New York*,) in Liber No. (2132) of Mortgages, at page 167, on the (*first*) day of (*June*, 1900,) Marked Exhibit B.

(Note. — Any other documentary evidence should follow here, as assignments of mortgage, policies of insurance, etc.)

STATEMENT.

Principal of bond and mortgage unpaid.....	\$15,000 00
Interest thereon from (<i>January 1</i> , 1905, to <i>April 12</i> , 1905,) 3 months and 12 days at rate of 5 per cent. per annum .....	.....
Taxes, assessment and insurance .....	.....
Total .....	.....

Dated, (*April 12th*, 1905.)

(*JOHN JONES*),
Referee.

(Note.—Any testimony taken before the referee should be attached to this report.)

Note. — The report of the referee to compute is usually delivered to the attorney for the plaintiff. He should see that it is filed with the equity clerk in the county clerk's office, and give all parties entitled thereto, notice of filing of the report, together with notice of application for final judgment of foreclosure and sale. It is deemed by some safer practice to attach a copy of the report to this notice.

Report Of Referee.

At the expiration of not less than eight days after the notice of filing has been given and before the application for final judgment comes on, a certificate should be obtained from the equity clerk that no exceptions to the report of the referee have been filed. And although the rule seems to permit the granting of final judgment without the filing of the usual note of issue, it is deemed safer to have a note of issue filed and the motion brought on in the usual way. The certificate of the clerk that no exceptions have been filed should be attached to the moving papers.

In drawing the final judgment these blanks are left; one for the amount of costs, one for the amount of extra allowance, and one for the name of the referee. The cost of searches made by a title company may be taxed as a disbursement provided the original searches are produced at taxation and filed with the judgment roll.

A direction is necessary to sell in one parcel or in separate parcels, and if such application has not been made upon the original motion for a reference to compute, it must be supported by affidavits upon application for final judgment.

The exact course of procedure is somewhat indefinite in reference to the sale of property, and a number of courses are open. It is safer, however, to insert in the order of reference, and especially in the final judgment, that the property should be sold in a particular way. If the property consists of more than one parcel, and if it has not been made a part of the order of reference, the question can be raised by affidavits on application for judgment of foreclosure and sale, and the judgment of foreclosure and sale drawn up accordingly, to sell as desired. If, however, it has been ascertained at the last moment, and after the judgment of foreclosure has been obtained and the decree entered, the course to pursue is to make a motion to amend the final decree and insert the proper directions to the referee as to the manner in which the property should be sold.

When a second mortgage is being foreclosed and a blanket mortgage is ahead of you, of course, it is absolutely necessary to sell in one parcel, direction should be inserted in the final decree, accordingly.

(Insert in Order of Reference.)

"It is further ordered that the referee examine into the question and report as to whether the property can be sold in parcels (or should be sold in one parcel)."

Notice Of Application.

On motions for final judgment, in actions of foreclosure, and partition where there have been papers printed or extra stenographers' work, it is wise to move that these be allowed as disbursements, and if allowed in the final judgment, may be taxed as part of the bill of costs.

FORM No. 301.

Notice of Filing of Referee's Report and of Application for Judgment of Foreclosure and Sale.

SUPREME COURT,
(*New York*) County.

(*COMMERCE BANK OF NEW
YORK,*)

Plaintiff,

against

(*JOHN W. McKEE*) and others,
Defendants.

Sir:

PLEASE TAKE NOTICE, that the report of (*Edward E. McCall,*) the referee appointed to compute the amount due on the bond and mortgage set forth in the complaint in the above-entitled action* [and to take proof of the facts and circumstances stated in the complaint and to examine the plaintiff or its agent on oath as to any payments which have been made], has been filed in the office of the Clerk of the County of (*New York*) on the (6th) day of (*October, 1903.*)

PLEASE TAKE NOTICE FURTHER, that, upon the summons and complaint herein filed in the office of the Clerk of the County of (*New York,*) on the (8th) day of (*June, 1903,*) and on the affidavit of (*William Hudson,*) verified the (6th) day of (*October, 1903,*) and on the affidavits of service, admissions of service, notices of appearance of——— and on the order of reference made herein on (3rd) day of (*October, 1903,*) with proof of service of copies and notice of entry thereof, and on the report of the referee therein named filed herein on the (6th) day of (*October, 1903,*)

*Portion in brackets inserted when some defendants are infants or absentees.

Affidavit On Application.

and upon the annexed affidavit of (*William Hudson*,) verified the (*20th*) day of (*July*, 1903,) and on all the papers and proceedings herein, a motion will be made at a Special Term of this court, (*Part I.*,) to be held at the County Court House, in the (*Borough of Manhattan*,) City of (*New York*,) on the (*tenth*) day of (*October*, 1903,) at 10:30 o'clock in the (*fore*)noon, or as soon thereafter as counsel can be heard, to confirm the said referee's report and for judgment of foreclosure and sale as prayed for in the complaint, with costs, and for an extra allowance in addition to costs under section 3253 of the Code of Civil Procedure, and for such other and further relief as may be just and proper.

Dated, (*New York*, *October 6*, 1903.)

Yours, etc.,

(*WHITE AND CURTIN*,)

Attorneys for Plaintiff,

(*149 Broadway*,
New York City.)

To

(*WILLIAM J. KIMBALL*,)

(*256 Broadway*,
New York City.)

FORM No. 302.

Affidavit on Application for Judgment of Foreclosure and Sale.

NEW YORK SUPREME COURT,

County of (*New York*.)

(*COMMERCE BANK OF NEW
YORK*,)

Plaintiff,

against

(*JOHN W. McKEE* and others,)

Defendants.

STATE OF NEW YORK, }
County of (*New York*.) } ss.:

(*WILLIAM HUDSON*,) being duly sworn, says that he is (*an attorney at law, associated with White & Curtin*,) attorneys for the plaintiff in the above-entitled action, and that he has charge of

Affidavit On Application.

the conduct of said action; that the complaint in said action was filed in the office of the Clerk of the County of (*New York*) on the (8th) day of (*June*, 1903.)

That this action is brought to foreclose a mortgage upon real property situate in the (*City*) and County of (*New York*), executed by defendant (*John W. McKee and Katherine D. McKee, his wife*), to the (*Commerce Bank of New York*), to secure the principal sum of (*eighteen thousand*) (\$18,000) dollars, of which there is now due the sum of (*fifteen thousand*) (\$15,000) dollars, together with interest thereon from (*December 30, 1902*), at the rate of (*six*) per centum per annum; that the said mortgage is dated on the (27th) day of (*August*, 1897,) and was recorded in the office of the (*Register*) of the County of (*New York*) on the (6th) day of (*October*, 1897,) at (one) o'clock (20) minutes (*P.*) M., in Liber (206) of Mortgages, (*section 10.*) page (285.)

That on the (8th) day of (*June*, 1903,) a notice of the pendency of this action, containing the names of the parties thereto, the object of the action, a description of the property in that county affected thereby, the date of the mortgage and the purpose thereof, and the time and place of recording the same was filed in the office of the Clerk of the County of (*New York*), that being the county in which the mortgaged premises are situated, and that since the filing of said notice the complaint in this action has not been amended by making any change in the parties to the action, nor so as to affect their property not described in the original complaint, nor as to extend the claim of the plaintiff against the mortgaged premises.

That all of said defendants are of full age, except the defendants (*Frederick Charles Dickenson*) and (*Arthur Henry Dickenson*), who are infants over the age of fourteen years, and have appeared by (*William J. Kimball*), their guardian *ad litem*, and that none of the defendants who have not appeared are absentees.

Deponent further says that more than twenty days have elapsed since the due service of the summons herein on all the defendants as appears by the affidavit of service and admission of service thereof and notices of appearance hereto annexed, except (*John W. McKee*), the party herein above mentioned, whose name was stricken from the summons and complaint and notice of pendency of this action by an order entered herein on the (3rd) day of (*October*, 1903.)

Affidavit On Application.

That the time to answer or demur to the complaint has expired as to all the defendants and that no answer or demurrer has been received, and that none of the defendants have appeared in this action excepting the defendant (*Charles A. Langwell*,) who has appeared herein by his attorney, (*Harris Clayton*,) and waived service of all papers in this action, except notice of sale and of proceedings to obtain surplus moneys, and the defendants (*Fredrick Charles Dickenson*) and (*Arthur Henry Dickenson*,) who have appeared herein by (*William J. Kimball*,) their guardian *ad litem* and demanded copies of all papers and notice of all proceedings herein.

That heretofore and on the (3rd) day of (*October, 1903*,) an order was entered herein striking the name of (*John W. McKee*) as a party defendant herein, from the summons, complaint and notice of pendency of this action, without prejudice to the proceedings already had herein, and directing that the action proceed as if the above-named (*John W. McKee*) had never been made a party thereto, and also referring it to (*Edward E. McCall*,) Esq., to compute the amount due to the plaintiff for principal and interest on the bond and mortgage set forth in the complaint in this action* [and also to take proof of the facts and circumstances stated in the complaint and to examine the plaintiff or its agent on oath as to any payments that have been made]; that a copy of said order and report was duly served on (*William J. Kimball*,) the guardian *ad litem* of the infant defendants above named; that the report of said referee was duly filed in the office of the Clerk of the County of (*New York*,) on the (6th) day of (*October, 1903*,) and due notice of such filing has been served on the attorneys for all defendants who have appeared in this action and demanded service of all papers.

(*WILLIAM HUDSON*.)

Sworn to before me, this (6th)

day of (*October, 1903*.)

(*MABEL C. LAKEY*,)

Notary Public,

(*New York*) County.

* Portion in brackets added when there are defendants who are infants or absentees.

Judgment.

FORM No. 303.

Judgment of Foreclosure and Sale.

At a Special Term of the Supreme Court held at the County Court House in the (*Borough of Manhattan, City of New York,*) on the (20th) day of (*April, 1905.*)

PRESENT:

Hon. (*GEO. C. BARRETT,*)

Justice.

(*THE EMIGRANTS' INDUSTRIAL SAVINGS BANK,*)

Plaintiff,

against

(*EMILE RAMEL and HENRIETTA RAMEL,*) his wife, and others,

Defendants.

On the summons and verified complaint and the proofs of service and notices of appearance already on file herein showing that each and all of the defendants have been duly personally served with the summons and verified complaint within this State or have voluntarily appeared herein, more than twenty days since; and on the affidavit of (*Charles B. Hawkes,*) the managing clerk in the office of the attorney for the plaintiff, verified the (11th) day of (*April, 1905,*) and already on file herein showing that none of the defendants are infants or absentees, that none of them have answered or demurred to the complaint herein and that the time for all of them to do so has expired, and that a notice of the pendency of this action was duly filed in the office of the Clerk of the County of (*New York,*) the county in which the mortgaged premises are situated more than twenty days since and at or after the time of filing the complaint as required by law, and that since the filing of such notice the summons and complaint herein have not been amended by making new parties to the action or so as to affect premises not described in said notice; and an order of reference having been made to compute the amount due to the plaintiff upon the bond and mortgage set forth in the complaint; and on reading and filing the report of (*John Jones,*) the referee named in the order of reference, by which report bearing date the (twelfth) day of (*April, 1905,*) it appears that the sum of (*fifteen thousand five*

Judgment.

hundred and twenty-eight) dollars and (*seventy-five*) cents was due thereon at the date of the said report, and on motion of (*William C. Orr,*) attorney for the plaintiff,

IT IS ORDERED, that the said report be, and the same is hereby in all respects confirmed, and on like motion it is adjudged that the mortgaged premises described in the complaint in this action, as hereinafter set forth, or so much thereof as may be sufficient to raise the amount due to the plaintiff for principal, interest, costs, taxes, assessments, insurance, and expenses of sale, and which may be sold separately without material injury to the parties interested, be sold at public auction at (*the New York Real Estate Salesroom,*) number (*149 Broadway,*) in the city of (*New York,*)* by or under the direction of (*John Jones,*) Esquire, counsellor at law, who is hereby appointed referee for that purpose; that the said referee give public notice of the time and place of such sale, according to law, and the practice of this court; that either or any of the parties to this action may purchase at such sale; that the said referee execute to the purchaser or purchasers a deed or deeds of the premises sold; that out of the moneys arising from such sale, after deducting the amount of his fees and expenses on said sale, and any lien or liens upon said premises so sold, at the time of such sale, for taxes or assessments, the said referee pay to the plaintiff or its attorney, the sum of (*one hundred and sixty-two 41/100*) dollars, adjudged to the plaintiff for costs and charges in this action together with an additional allowance of (*two hundred*) dollars, with interest thereon from the date hereof, and also the amount so reported due as aforesaid, together with the legal interest thereon, from the date of the said report, or so much thereof as the purchase money of the mortgaged premises will pay of the same, take a receipt therefor, and file it with his report of sale; that he deposit the surplus moneys (if any), with the (*Chamberlain of the City of New York*) to the credit of this action within five days after he receives the same, to be drawn only on the order of the court, signed by the clerk and a judge of the court, and that he make a report of such sale, and file it with the clerk of this court with all convenient speed; that if the proceeds of such sale be insufficient to pay the amount so reported due the plaintiff with the interest and costs as aforesaid, the said referee specify the amount of such deficiency in his report of sale, and that the defendant, (*Emile Ramel,*) pay

* Now at 14-16 Vesey street.

Notice Of Sale.

the same to the plaintiff, and that the defendant have execution therefor; and that the purchaser or purchasers at such sale be let into possession on production of the referee's deed.

AND IT IS FURTHER ADJUDGED, that the defendants and all persons claiming under them, or any or either of them, after the filing of such notice of pendency of this action, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold or any part thereof.

The following is a description of the mortgaged premises hereinbefore mentioned.

(Description.)

Enter,
(*GEO. C. BARRETT*,)
J. S. C.

Note. — A copy of the judgment of foreclosure and sale should be served on all parties interested.

Notice of sale must then begin by publication of advertisement twice a week for three successive weeks, and in this connection the requirement of Rule 14 of the General Rules of Practice that a diagram of the property and the street number must be inserted in the advertisement, must be kept in mind.

Notice of sale is also given to all parties who have appeared in the action and demanded same, by personal service of a copy of the notice of sale upon their attorneys.

Terms Of Sale.

FORM No. 304.

Terms of Sale.

SUPREME COURT,
(*New York*) County.

(*CHARLES ELLERSLEY DODGE*),

Plaintiff,

against

(*DENISON OLIVER*) and others,
Defendants.

The premises described in the annexed advertisement of sale, will be sold under the direction of (*William Hammond*), referee, upon the following terms:

Dated, (*New York, November 17, 1906.*)

1st. (*Ten*) per cent. of the purchase money of said premises will be required to be paid to the said referee, at the time and place of sale, and for which the said referee's receipt will be given.

2d. The residue of said purchase money will be required to be paid to the said referee, at his office, No. (*111 Broadway*), in the City of (*New York*), on the (*second*) day of (*December, 1906*), when the said referee's deed will be ready for delivery.

3d. The referee is not required to send any notice to the purchaser; and if he neglects to call at the time and place above specified to receive his deed, he will be charged with interest thereafter on the whole amount of his purchase, unless the referee shall deem it proper to extend the time for the completion of said purchase.

4th. All taxes, assessments and other incumbrances, which, at the time of sale, are liens or incumbrances upon said premises, will be allowed by the referee out of the purchase money, provided the purchaser shall, previous to the delivery of his deed, produce to the referee proof of such liens, and duplicate receipts for the payment thereof.

5th. The purchaser of said premises, or any portion thereof, will at the time and place of sale, sign a memorandum of his purchase, and (*pay in addition to the purchase money, the auctioneer's fee of fifteen dollars for each parcel separately sold, and the Exchange Salesroom fee of two dollars for each knock down.*)

 Terms Of Sale.

6th. The biddings will be kept open after the property is struck down; and in case any purchaser shall fail to comply with any of the above conditions of sale, the premises so struck down to him will be again put up for sale, under direction of said referee, under the same terms of sale, without application to the court, unless plaintiff's attorney shall elect to make such application, and such purchaser will be held liable for any deficiency there may be between the sums for which said premises shall be struck down upon the sale, and that for which they may be purchased on the re-sale, and also for any costs or expenses occurring on such re-sale.

7th. (*The premises will be sold subject to a first mortgage for \$10,000 now a lien thereon, with interest from December 30, 1899, at 5 per cent. per annum, amounting to \$438.70 to date.*)

(WILLIAM HAMMOND,)

Referee.

MEMORANDUM OF SALE.

.....have this.....day of....., 190..., purchased the premises in the above annexed printed advertisement of sale, for the sum of....., and hereby promise and agree to comply with the terms and conditions of the sale of said premises, as above mentioned and set forth.

Dated, New York,, 190...

New York,, 190... Received from.....
, the sum of....., being ten per
 cent. on the amount bid by.....for property sold by
 me under the order in this cause.
 \$.....

Referee's Report.

FORM No. 305.

Referee's Report of Sale.

SUPREME COURT,
County of (*New York*.)

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK*),

Plaintiff,

against

(*EMILE RAMEL*) and others,
Defendants.

To the Supreme Court:

I, (*John Jones*), the referee appointed by the judgment made and entered in this action bearing date the (*fourteenth*) day of (*April*, 1905,) to make the sale of the mortgaged lands and premises therein particularly described, do respectfully report as follows:

First. That I caused due notice of the sale of the said lands and premises on the (*9th*) day of (*May*, 1905,) at the (*New York Real Estate Salesroom, No. 14 and 16 Vesey street*,) in the City of (*New York*,) at (*12*) o'clock (*noon*) of that day to be given and published according to law and the rules and practice of this court, as will fully appear by the affidavits hereto annexed.

Second. That I attended in person at the time and place for which said sale was noticed, and adjourned the same (*one week to May 16th*, 1905,) at the same hour and place, and that on (*May 16th*, 1905,) I again attended in person at the time and place aforesaid and adjourned said sale (*one week to May 23rd*, 1905,) at the same hour and place, and that I caused due notice of said adjournments to be given and published according to law and the practice of this court, as will fully appear from the affidavits hereto annexed.

Third. That at the time and place for which the said sale was noticed as aforesaid, I attended in person, and, agreeably to such notice, offered the said mortgaged lands and premises for sale to the highest bidder, and sold the same to (*William J. Gilroy*) for

Referee's Report.

the sum of (*twenty-five thousand dollars* (\$25,000)), that being the highest sum bidden therefor and received from the purchaser in cash (*ten*) per cent. of said sum.

Fourth. That I have allowed to the said purchaser, out of the said purchase money, the sum of (*six hundred and seven 43/100*) dollars paid by him for taxes, which were liens on said mortgaged premises at the time of such sale, and for which receipts are hereto annexed.

Fifth. That I have received from such purchaser the balance of the said purchase money, to wit, the sum of (*twenty-one thousand eight hundred and ninety-two 57/100*) dollars, and have disposed of the same as follows: I have retained for my fees and expenses on such sale the sum of (*one hundred and seventy-one 30/100*) dollars. I have paid to the attorney for the plaintiff the sum of (*three hundred and sixty-nine 40/100*) dollars for the costs and additional allowance awarded to the plaintiff by such judgment and for which a receipt is hereto annexed.

Sixth. That I have paid to the attorney for the plaintiff the sum due on the bond and mortgage upon which this action was brought, and directed to be paid to it by said judgment the sum of (*fifteen thousand eight hundred and thirty-six 74/100*) dollars, and for which a receipt is hereto annexed.

Seventh. That I have made, executed and delivered to such purchaser a good and sufficient deed of conveyance of the said mortgaged premises so sold.

*-Eighth. That I have paid to the (*Chamberlain of the City of New York,*) for the use of the person or persons entitled thereto the sum of (*eight thousand and fifteen 13/100*) dollars, the surplus herein, and have taken his receipt therefor, which is hereto annexed.

Annexed hereto, and made part of this my report is a statement showing the several items aforesaid and the mode of computation of such surplus.

All of which is respectfully submitted.

Dated, (*August 15th, 1905.*)

(*JOHN JONES,*)

Referee.

* NOTE.—In case of a deficiency, insert instead of paragraph eight:

"That after such sale herein, and the disposal of the proceeds thereof, as above provided, the amount of the deficiency is the sum of.....dollars, with interest thereon from the date of this report.)"

Referee's Report.

STATEMENT.

Amount of purchase money.....	(\$25,000 00)
Allowed for taxes	(\$607 43)
Referees' fees and expenses.....	(171 30)
Plaintiff's costs and allowance.....	(369 40)
	<hr/> (1,148 13)
(April 14th, 1905,) amount due on bond and mortgage as per judg- ment	(\$23,851 87)
(August 15th, 1905,) interest to date	(\$15,528 75)
	<hr/> (307 99)
Amount paid to plaintiff.....	(15,836 74)
	<hr/> (15,836 74)
Surplus	(\$8,015 13)
Dated, (August 15th, 1905.)	

(JOHN JONES,
Referee.

[Exhibits Attached.]

SUPREME COURT,
County of (New York.)

(THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK,)

Plaintiff,

against

(EMILE RAMEL,) and others,

Defendants.

RECEIVED (August 14th, 1905,) of (John Jones,) the referee who made the sale of the premises under and by virtue of the judgment in the above entitled action, the sum of (\$15,836 74/100) dollars, which sum, being part of the proceeds of the sale of the said premises, is received by me under and by virtue of the provisions of said judgment, being the amount adjudged to be paid to said plaintiff, with interest thereon, as mentioned in said judgment.

(WILLIAM ORR,)

Attorney for Plaintiff.

Referee's Report.

SUPREME COURT,
County of (*New York.*)

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK,*)

Plaintiff,

against

(*EMILE RAMEL,*) and others,
Defendants.

RECEIVED (*August 14th, 1905,*) of (*John Jones,*) who made the sale of the premises under and by virtue of the judgment in the above entitled action, the sum of (\$369 40/100) dollars, being the amount of the costs and disbursements of the plaintiff in said action, as taxed, with interest thereon and additional allowance, which are paid by said referee under and by virtue of the provisions of said judgment.

(*WILLIAM ORR,*)

Attorney for Plaintiff.

SUPREME COURT,
County of (*New York.*)

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK,*)

Plaintiff,

against

(*EMILE RAMEL,*) and others,
Defendants.

RECEIVED (*August 14th, 1905,*) of (*John Jones,*) referee herein, pursuant to the judgments in this action, the sum of (8,015 31/100) dollars, being surplus moneys received on the sale of the premises in the above entitled action.

(*PATRICK KEENAN,*)

(*Chamberlain of the City of New York.*)

Notice Of Filing Of Report.

The referee should attach the following papers to his report in addition to the above:

1. Affidavits of publication of notice of sale.
2. Receipted bills for referee's disbursements.
3. Receipted bills for amount of taxes allowed.
4. Terms of sale, signed by bidder.
5. Assignment of bid.

FORM No. 306.

Notice of Filing of Referee's Report of Sale.

SUPREME COURT,
(*New York*) County.

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK,*)

Plaintiff,

against

(*EMILE RAMEL,*) and others,
Defendants.

Sir:

PLEASE TAKE NOTICE that the report of (*John Jones,*) Esq., the referee appointed by the judgment in this action to sell the mortgaged premises, was filed in the office of the clerk of this court on the (14th) day of (*November, 1905.*)

Dated, (*New York, November 14, 1905.*)

Yours, &c.,

(*EDWARD WHITNEY,*)

Attorney for Plaintiff,

(120 *Broadway,*

New York City.)

To

(*R. DUDENSING,*) Esq.,

Attorney for defendant (*JAMES T. RUSSELL,*)

(71 *Broadway,*

New York City.)

Note.—The service of notice of filing of the referee's report of sale is frequently omitted.

SURPLUS MONEY PROCEEDINGS.

NOTE.

A notice of claim to surplus moneys must be filed in the office of the clerk where the report of sale is filed before application for the appointment of a referee is made.

Upon such application regular notice of motion must be given to those who have filed such notices or appeared in the action. The order of reference will be granted upon proof of due notice to all such parties and an affidavit of the claimant's attorney.

FORM No. 307.

Notice of Claim to Surplus Moneys.

SUPREME COURT,
County of (*New York*.)

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK*),

Plaintiff,

against

(*EMILE RAMEL*), and others,
Defendants.

To

(*Thomas L. Hamilton*),

Clerk of the County of *New York*.

Sir:

TAKE NOTICE that (*James T. Russell*), who resides at (*No. 229 W. 10th Street*), in the (*Borough of Manhattan, City of New York*), is entitled to the surplus moneys, or some part thereof, arising from the sale of the mortgaged premises, under judgment of foreclosure and sale entered in the above entitled action; that the extent of the claim of the said (*James T. Russell*) is as follows: Said (*James T. Russell*) recovered a judgment in the (*Supreme*) Court, (*New York*) County against (*Emile Ramel*), the de-

Affidavit.

fendant above named, in an action in which said (*James T. Russell was sole plaintiff*), which judgment was docketed in the office of the Clerk of the County of (*New York*) on the (*2nd*) day of (*May, 1901*) and an execution against the property of said (*Emile Ramel*) issued upon said judgment on the (*1st*) day of (*June, 1905,*) to the Sheriff of the County of (*New York,*) was by said sheriff returned wholly unsatisfied on the (*14th*) day of (*August, 1905.*) And that the said (*James T. Russell*) claims that said judgment is a lien upon said mortgaged premises next in priority after the mortgage of the plaintiff in this action, and is first lien upon said surplus moneys.

Dated, (*10th Feby., 1906.*)

(*JAMES T. RUSSELL,*) Claimant.

By (*R. Dudensing,*) his atty.,

(*71 Broadway,*
N. Y. City.)

FORM No. 308.

Affidavit on Application for Appointment of Referee.

SUPREME COURT,
(*New York*) County.

(*THE EMIGRANTS' INDUSTRIAL
SAVINGS BANK,*)

Plaintiff,

against

(*EMILE RAMEL,*) and others,
Defendants.

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*Richard Dudensing, Jr.,*) being duly sworn, says that he is attorney for (*James T. Russell,*) who had and claimed a lien on the mortgaged premises at the time of the sale in this action.

That this action was brought to foreclose a mortgage upon certain premises therein described, situated in the County of (*New York.*)

Affidavit.

That on the (30th) day of (*September*, 1905,) a final judgment was entered therein, in the office of the Clerk of the County of (*New York*) for the foreclosure of said mortgage and the sale of said premises, and said premises were sold pursuant to said judgment by John Jones, referee, on the (10th) day of (*November*, 1905.)

That the report of said referee, dated (*December 10*, 1905,) has been filed in the office of the Clerk of the County of (*New York*), by which report it appears that after paying the amounts directed in and by said judgment to be paid out of the proceeds of said sale there remained a surplus of (*twenty-one hundred*) dollars, which amount has been paid by said referee into court and deposited with the (*Chamberlain of the City of New York*) to the credit of this action and for the use of the persons entitled thereto.

That said (*James T. Russell*) is entitled to said surplus moneys, or some part thereof, and that the nature and extent of his claim thereto are set forth in the notice hereinafter mentioned.

That from all the searches for conveyances and incumbrances made in this action, and filed with the judgment roll herein, the following unsatisfied liens upon said surplus moneys, and no others, appear:

1. (Specify liens.)

2. (Specify liens.)

and no other unsatisfied liens thereon are known to this deponent to exist.

That the notice of the claim of the said (*James T. Russell*) to such surplus moneys has been filed by him with the Clerk of the County of (*New York*), a copy of which is hereto annexed and marked Exhibit A.

RICHARD DUDENSING, JR.

Sworn to before me, this }
4th day of *June*, 1906. }

(*BENJAMIN BENSON*.)

Notary Public,

(*New York*) County.

Order.

FORM No. 309.

Order Appointing Referee to Determine.

At a Special Term (*Part I*) of the Supreme Court held in and for the County of (*New York*), at the County Court House in (*the Borough of Manhattan, City of New York*), on the (*fifth*) day of (*March*, 1906.)

PRESENT:

Hon. (*JOHN PROCTOR CLARKE*), Justice.

(*MARY ELDRIDGE*, as executrix of the last will and testament of Benjamin Eldridge, deceased,)

Plaintiff,

against

(*THEODORE THROOP*, *ELIZABETH M. C. THROOP*, *JAMES T. RUSSELL*, *DANA I. PERRY*, *WHITE SEWING MACHINE COMPANY*, and *MITCHELL L. ERLANGER*, as Sheriff of the City and County of New York,)

Defendants.

On reading and filing a notice of claim by (*James T. Russell*) to surplus moneys in this action, and on motion of (*Richard Dudensing, Jr.*) attorney for the said (*James T. Russell*), and on reading and filing proof of due service of notice of this application on all the parties who have appeared in said action, and no one appearing to oppose said motion, and (*John J. McKelvey*) appearing for the (*White Sewing Machine Company*),

ORDERED, that it be referred to (*John Jones*), Esq., of (*the City of New York*), as a referee to ascertain and report the amount due the said (*James T. Russell*), or to any other person, which is a lien upon such surplus moneys, and to ascertain the priorities of the several liens thereon, and that the said referee report thereon with all convenient speed.

(*JOHN PROCTOR CLARKE*),

J. S. C.

Referee's Report.

NOTE.

Upon the reference the referee should have presented to him:

I. Certificate of the clerk as to who have appeared and filed claims against the surplus moneys.

II. Certificate of the chamberlain as to the amount of the surplus funds deposited with him.

III. Such other evidence as he shall require to satisfactorily determine the priority of the claims.

The proceedings are the same as those in an ordinary reference to hear and determine.

The referee must issue a subpoena to all who have claims against the surplus moneys.

FORM No. 310.

Report of Referee.

SUPREME COURT,

County of (*New York*),

(*MARY ELDRIDGE, as executrix of the last will and testament of Benjamin Eldridge, deceased,*)

Plaintiff,

against

(*THEODORE THROOP, ELIZABETH M. C. THROOP, JAMES T. RUSSELL, DANA I. PERRY, WHITE SEWING MACHINE COMPANY, and MITCHELL L. ERLANGER, as Sheriff of the City and County of New York,*)

Defendants.

To the Supreme Court:

I, the undersigned, referee appointed by an order of this court granted on the (21st) day of (*February*, 1903,) to ascertain and report the amount due to (*James T. Russell*) or to any other person, which is a lien upon the surplus moneys in this action, and to ascertain and report the priorities of the several liens thereon, do respectfully report:

Referee's Report.

That I caused all parties who have appeared in this action, and all persons who have filed notices of claim upon the surplus moneys, and all persons who were known to have liens thereon, as appears by the certificate of the clerk, which is hereto annexed, showing who have appeared in the action and filed notices of claim, and by the affidavit of (*R. Dudensing, Jr.*,) attorney for the claimant, (*James T. Russell*,) showing what liens appear upon the searches on file, to be summoned to appear before me, as appears from the proof of service of the subpoena herein, which is also hereunto annexed.

That on said hearing I was attended by (*R. Dudensing, Jr.*,) attorney for the claimant, (*James T. Russell*,) and by (*John J. McElvey*,) attorney for the (*White Sewing Machine Company*,) and by (*Knevals & Perry*,) attorneys for (*Theodore Throop* and *Elizabeth M. C. Throop*;) that the testimony of the witnesses upon such hearing was read and signed by them, and that such testimony and all the evidence except such of it as was documentary, is annexed to this report.

That from such testimony and evidence I make the following

FINDINGS OF FACT.

I. That the amount of the surplus moneys in this action is the sum of (*nine hundred and ten 45/100 dollars*,) as appears by the certificate of the (*Chamberlain of the City and County of New York*,) filed in the office of the Clerk of the County of (*New York*) on the (*10th*) day of (*February*, 1903.)

II. That on the (*12th*) day of (*January*, 1899,) the defendants, (*Theodore Throop* and *Elizabeth M. C. Throop*,) made, executed and delivered unto the claimant, (*James S. Russell*, *their certain bond and mortgage of the property which is the subject of this action*, dated the *12th* day of *January*, 1899, to secure the payment of the sum of four hundred and fifty dollars, upon the *12th* day of *January*, 1900, with interest thereon semi-annually at the rate of five per centum per annum, payable on the twelfth days of *July* and *January*, and recorded in the office of the Register of the *City and County of New York* in *Liber 2376 of Mortgages*, at page 267, on the *14th* day of *January*, 1899, at 12 o'clock and 50 minutes, P. M.)

III. That no part of the principal or interest upon said (*bond and mortgage*) has ever been paid.

IV. That on the (*22nd* day of *June*, 1902, *an action was begun in the Supreme Court by the White Sewing Machine Company*

Referee's Report.

against Theodore Throop, and upon the same day a warrant of attachment against the property which is the subject of this action was issued to the Sheriff of the City and County of New York, and an undertaking on attachment was approved and filed in the office of the Clerk of the County of New York.)

V. That on the (23rd) day of (November, 1902, judgment was rendered in said action in favor of the White Sewing Machine Company and against the said Theodore Throop for one thousand and one 56-100 dollars, and was filed in the office of the Clerk of the County of New York.)

VI. That upon the (23rd) day of (November, 1902, said judgment was entered upon the docket of judgments in the office of the Clerk of the County of New York.)

VII. That (execution was issued upon said judgment on the 23rd day of November, 1902, but no part of the same has ever been satisfied.)

[VIII. That no part of said judgment has ever been paid or satisfied.]

And, from the foregoing findings of fact, I further find the following

CONCLUSIONS OF LAW.

I. That after paying the costs and disbursements of this reference, the liens upon said surplus moneys are as follows:

II. That there is due and owing to the said claimant, (*James T. Russell*,) under and by virtue of the said (*bond and mortgage*,) the sum of (*four hundred and fifty*) dollars, principal, together with (*ninety-four*) dollars and (*sixty-three*) cents interest from the (12th) day of (*January*, 1899,) to the date of this report, at the rate of (*five*) per centum per annum, amounting in all to the sum of (*five hundred and forty-four*) dollars and (*sixty-three*) cents and that said amount is the first lien on the said surplus moneys in this action.

III. That there is due and owing to the said (*White Sewing Machine Company*) the sum of (*one thousand and one and 56-100*) dollars, and interest thereon from the (23rd) day of (*November*, 1902,) amounting, at the date of this report, to the sum of (*twenty*) dollars and (*thirty-seven cents*,) upon and by virtue of (*said judgment recovered by it against the said Theodore Throop, as aforesaid*,) and that the said amount is the second lien on the said surplus moneys in this action.

My fees are \$50.

Dated, (*March 25, 1903.*)

(*JOHN JONES*,)

Referee.

Order Conferring Report.

FORM No. 311.

Order Confirming Referee's Report.

At a Special Term of the Supreme Court, held at the County Court House in the (*Borough of Manhattan, City of New York,*) on the (28th) day of (*May, 1905.*)

PRESENT:

Hon. (*VERNON M. DAVIS,*) Justice.

(*THE EMIGRANTS' INDUSTRIAL SAVINGS BANK,*)

Plaintiff,

against

(*EMILE RAMEL,*) and others,
Defendants.

On the report of (*John James,*) Esq., the referee appointed herein to ascertain and report the amount due to (*James T. Russell,*) and to any other person, which amount is a lien on the surplus moneys in this action, and to ascertain the priorities of the several liens thereon, which report was dated the (5th) day of (*February, 1905,*) and filed in the office of the clerk of this court on the (6th) day of (*February, 1905,*) and on all the testimony and papers annexed to said report and filed therewith, and it appearing that due notice of the filing of said report and of this motion has been given to the attorneys for the parties who have appeared in this proceeding and who filed notices of claim to such surplus moneys previous to the entry of said order of reference, and after hearing (*R. Dudensing, Jr.,*) attorney for the claimant, (*James T. Russell,*) and no one opposing, it is

ORDERED, that the said report be and the same hereby is in all things confirmed, and that the (*Chamberlain of the City of New York*) pay out and disburse the moneys in his hands to the credit of this action, after deducting therefrom the fees and commissions allowed to him by law, as follows, and in the following order or priority:

I. That he pay to (*John Jones,*) Esq., referee in this proceeding, the sum of (*fifty*) dollars, for his fees as such referee.

Interlocutory Decree.

II. That he pay (*R. Dudensing, Jr.*,) attorney for the claimant, (*James T. Russell*,) the sum of (*sixty*) dollars, as an allowance by way of costs in this proceeding.

III. That he pay to the claimant, (*James T. Russell*,) or to his attorney, (*R. Dudensing, Jr.*,) the sum of (*five hundred*) dollars, and interest thereon from the (*5th*) day of (*February*, 1905,) the date of said referee's report.

(Here follows the different claims in the order of priority, as found by the referee.)

Enter,

(*V. M. D.*,)

J. S. C.

DIVORCE.

FORM No. 312.

Interlocutory Decree of Divorce.

At a Special Term, (*Part III*,) of the Supreme Court, held in and for the County of New York, at the Court House, in the (*City of New York, Borough of Manhattan*,) on the (*14th*) day of (*October*, 1904.)

PRESENT:

Honorable (*HENRY A. GILDERSLEEVE*,)

Justice.

(*PAULINE POE*,)

Plaintiff,

against

(*PERCIVAL POE*,)

Defendant.

This cause having been duly commenced by the personal service of the summons and complaint therein on the defendant within the State of New York; and the defendant having answered and the issues having been duly referred to (*Mark Levison*,) Esq., an attorney and counsellor at law, as sole referee, to hear and determine the same and report thereon to this court; and the issues in this action having been duly tried

Interlocutory Decree.

before said referee; and said referee having duly made and filed his report herein, wherein and whereby he finds that the allegations of the complaint have been established, and that the plaintiff is entitled to judgment of divorce herein; and it appearing satisfactorily to this court that the defendant herein has been guilty of adultery, as charged in the complaint; and a motion having been made to confirm said report; now, on reading and filing the summons, complaint, answer, testimony, referee's report and notice of motion to confirm said report; and

After hearing (*Henry Hunter*,) of counsel for the plaintiff, in support of said motion, and (*Franklin Barrett*,) Esq., of counsel for the defendant, in opposition thereto, it is

On motion of (*Howe & Hunter*,) attorneys for the plaintiff,

ORDERED, ADJUDGED and DECREED, that the said motion be, and the same hereby is granted, and that the report of the referee herein be, and the same hereby is in all respects confirmed; and that the plaintiff is entitled to judgment to be entered as hereinafter provided:

That the marriage heretofore solemnized between the said plaintiff, (*Pauline Poe*) and the defendant, (*Percival Poe*) at (*Albany*,) in the County of (*Albany*,) and State of (*New York*,) on the (18th) day of (*June*, 1900,) as set forth in the complaint herein, be dissolved by reason of said defendant's adultery; and that the said parties, and each of them, be freed from the obligations thereof.

(Provision as to the custody of children if any.)

And it is further

ORDERED, ADJUDGED AND DECREED, that final judgment shall not be entered in this action until the expiration of three months after the filing of the report herein and this decree, and that after the expiration of said period of three months, final judgment shall be entered upon said report, and this decree, unless otherwise ordered by the court, shall be final.

And it is further

ORDERED, ADJUDGED AND DECREED, that this judgment shall be interlocutory only.

Enter,

(*HENRY A. GILDERSLEEVE*,)

Justice Supreme Court.

Notice Of Motion For Final Decree.

FORM No. 313.

Notice of Motion for Final Decree.

SUPREME COURT,
County of (*New York.*)

(*RUTH ROE,*)
Plaintiff,

against

(*REGINALD ROE,*)
Defendant.

Sir:

PLEASE TAKE NOTICE that on the annexed affidavit, and on all the pleadings and proceedings herein, a motion will be made before one of the justices of this court, at Special Term, (*Part III thereof,*) to be held at the County Court House in the (*City of New York, Borough of Manhattan,*) on the (*20th*) day of (*January, 1905,*) at quarter past ten o'clock in the forenoon of that day, or so soon thereafter as counsel can be heard, that final judgment of divorce be granted to the plaintiff above named, in accordance with the interlocutory judgment granted herein, and pursuant to section 1774 of the Code of Civil Procedure; and that the plaintiff have such other and further relief in the premises as may seem just and proper.

Dated, (*New York, January 15, 1905.*)

Yours, etc.,

(*HOWE & HUNTER,*)

Attorneys for Plaintiff,

Office & P. O. Address,

Number (*346 Broadway,*

Manhattan Borough,

New York City.)

To (*FRANKLIN BARRETT,*) Esq.,

Defendant's Attorney,

(*75 William St.,*

Manhattan, N. Y. City.)

Affidavit — Motion For Final Decree.

FORM No. 314.

Affidavit on Motion for Final Decree.

SUPREME COURT,
County of (*New York.*)

(<i>RUTH ROE,</i>)	} Plaintiff,
against	
(<i>REGINALD ROE,</i>)	
Defendant.	

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*Henry H. Hunter,*) one of the plaintiff's attorneys in the above entitled action, being duly sworn, says that a decision and an interlocutory judgment of divorce in favor of the plaintiff in the above entitled action was signed by Mr. Justice (*Henry A. Gilder-sleeve,*) and was filed in the office of the Clerk of (*New York*) County on the (*14th*) day of (*October, 1904,*) and that no order or direction of the court in any way affecting said judgment, or application for such an order or direction, has since then been made, to deponent's knowledge, and that said court has not forbidden the entry of final judgment herein.

(*HENRY H. HUNTER.*)

Sworn to before me, this }
(*15th*) day of (*January, 1905.*) }

(*MAX LEVY,*)

Notary Public,

(*N. Y.*) Co., No. (23.)

Final Decree.

FORM No. 315.

*Certificate of Clerk.

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

I hereby certify that a decision and an interlocutory judgment of divorce in favor of the plaintiff in an action brought in the Supreme Court by

(*RUTH ROE*,) Plaintiff,

against

(*REGINALD ROE*,) Defendant,

was filed in this office on the (14th) day of (*October*, 1904,) and that no order or direction of the court in any way affecting said judgment or application for such an order or direction has since then been filed in this office.

Dated, (*New York*, *January* 20, 1905.)

(*THOMAS L. HAMILTON*,) Clerk.

FROM No. 316.

Final Decree of Divorce.

At a Special Term of the Supreme Court of the State of New York, held in and for the County of (*Kings*,) at the County Court House in the (*Borough of Brooklyn*,) on the (23rd) day of

PRESENT: (*January*, 1905.)

(*JOSIAH T. MAREAN*,) Justice.

(*RACHEL ROE*,)

Plaintiff,

against

(*RICHARD ROE*,)

Defendant.

The above cause having been duly reached on the calendar for the Special Term of this court, and the said cause having been

* Usually this certificate bears date the return day of the motion. The original affidavit and notice of motion are handed to the record clerk in the County Clerk's office on that day and his certificate is then attached and submitted with the papers. It has been held, however, that the correct practice is to obtain and serve the certificate as part of the papers on the motion for final decree and then have the certificate continued to the day of the submission of the motion.

Final Decree.

duly heard by the said court, and the court having duly made findings of fact and conclusions of law, and an interlocutory judgment entered herein on the (8th) day of (*June*, 1904,) that after three months from the entry of said interlocutory judgment a final decree be entered in accordance therewith dissolving absolutely the marriage between the said plaintiff and defendant, unless in the meantime otherwise ordered by the court, and three months having expired in the meantime, it not having been otherwise ordered, and it appearing by the affidavit of (*Thomas Adam*,) verified the (15th) day of (*January*, 1905,) and the certificate of the Clerk of the County of (*Kings*,) dated (*January* 14, 1905,) hereto annexed, that three months have elapsed since the granting of the interlocutory judgment aforesaid, and that no order nor direction of the court in any manner affecting said judgment, or any application for such an order or direction has been made since, and that the court has not forbidden the entry of final judgment herein; now, on motion of (*Thomas Adam*,) attorney for the plaintiff,

IT IS ORDERED, ADJUDGED AND DECREED, that the marriage between the said plaintiff, (*Rachel Roe*,) and the said defendant, (*Richard Roe*,) be dissolved, and the same is hereby dissolved accordingly, and the said parties are and each of them is freed from the obligation thereof.

IT IS FURTHER ADJUDGED, that it shall be lawful for the said plaintiff to marry again in the same manner as though the defendant were actually dead; but it shall not be lawful for the said defendant to marry again until the said plaintiff is actually dead.

IT IS FURTHER ADJUDGED, that the custody of the child, the issue of the marriage between the parties hereto, to wit: (*Richard Roe, Jr.*,) be awarded to the plaintiff.

(*JOSIAH T. MAREAN*,)

J. S. C.

FORM No. 317.

Final Decree of Divorce.

At a Special Term (*Part III.*) of the Supreme Court of the State of New York, held in and for the County of (*New York*), at the County Court House, in the (*Borough of Manhattan, City of New York*), on the (*10th*) day of (*February*, 1907.)

PRESENT:

Hon. (*JAMES A. BLANCHARD.*)

(<i>JANE DOE</i>), Plaintiff, against (<i>JOHN DOE</i>), Defendant.	}
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The summons and complaint in this action having been duly served upon defendant by publication, pursuant to an order of this court, dated (*May 26, 1905*), and filed in the office of the Clerk of the County of (*New York*), on the (*27th*) day of (*May, 1905*), and the defendant having made default in appearance and pleading herein, and this case coming on to be heard on the regular call of the calendar of this court on the (*14th*) day of (*November, 1906*), and the plaintiff appearing personally and by (*Arthur Aarons*), her attorney, and the defendant not appearing either personally or by attorney, and satisfactory evidence having been produced to the court on the part of the plaintiff, proving the material allegations of her complaint, and a decision and interlocutory judgment of divorce in favor of the plaintiff having, on the (*25th*) day of (*November, 1906*), been entered and filed in the office of the Clerk of the County of (*New York*), and it appearing by the affidavit of (*Arthur Aarons*), verified (*February 27, 1907*), and the certificate of the Clerk of the County of (*New York*), dated (*February 27, 1907*), hereto annexed, that three months have elapsed since the entry and filing of the interlocutory judgment as aforesaid, that no order nor direction of the court

Final Decree.

in any way affecting said judgment or application for such an order or direction has since then been made, and that the court has not forbidden the entry of final judgment herein.

NOW, on motion of (*Arthur Aarons*,) plaintiff's attorney herein, it is

ORDERED, ADJUDGED AND DECREED, that the marriage hereinbefore solemnized between the plaintiff (*Jane Doe*,) and the defendant (*John Doe*,) in the (*Borough of Brooklyn, in the City of New York*,) on or about the (13th) day of (*December, 1896*,) be dissolved, and the same hereby is dissolved accordingly by reason of said defendant's adultery, and the plaintiff be, and she hereby is discharged from all liability and obligations occasioned by reason of said relationship of said marriage; and it is further

ORDERED, ADJUDGED AND DECREED, that it shall be lawful for the said plaintiff (*Jane Doe*) to marry again in the manner as if the said defendant (*John Doe*) were actually dead, but that it shall not be lawful for the said defendant to marry any other person until the said plaintiff (*Jane Doe*) shall be actually dead.

Dated, (*New York, February 10, 1907.*)

Enter,

(*J. A. B.*,)

J. S. C.

(*PETER J. DOOLING*,)

Clerk.

Affidavits And Acknowledgments.

**Probate; Administration; Guardianship; Adoption of Infant;
Transfer Tax.****Note.**

Where affidavits or acknowledgments are taken *outside the county* in which the proceeding is had, the usual certificate of the county clerk as to the officer's authority to take affidavits and acknowledgments must be affixed to the paper:

When taken *outside of the State of New York*, a certificate must be produced from the clerk of *the county in which the officer taking the acknowledgment resides*. This certificate must show that the officer taking the acknowledgment is an officer of the State where it is taken and is authorized by the laws thereof *to take acknowledgments of deeds to be recorded therein*; that said clerk is well acquainted with such officer's handwriting and verily believes the signature to the original certificate is genuine.

It is well to use the following form of certificate, which is approved by the Surrogate's Court of New York County.

I,, Clerk of the County of (and also Clerk of the, the same being a court of record of the aforesaid county, having by law a seal) do hereby certify that, esquire, whose name is subscribed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a duly commissioned and sworn and residing in said county, and was, as such, an officer of said State, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given to his official acts; and I further certify that I am well acquainted with his handwriting and verily believe that the signature to the attached certificate is his genuine signature.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal this day of

[L. s.] 190 . . .

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.

PROBATE.

FORM No. 318.

Petition for Probate.

SURROGATE'S COURT,
County of (*New York*.)

In the Matter of Proving the last Will
and Testament of

(*JAMES BARCLAY*.)

Deceased,

As a Will of Real and Personal Prop-
erty.

To the Surrogate's Court of the County of (*New York*.)

The petition of (*Anita Barclay*.) residing at (*White Plains, New York*.) respectfully sheweth, that your petitioner is (*the executrix named in the last will and testament of James Barclay*.) late of the County of (*New York*.) deceased;

That said last will and testament, herewith presented, relates to both real and personal property, and bears date the (*sixth*) day of (*June*, 1902,) and is signed at the end thereof by the said testator, and by (*John Hatch*) and (*James Cole*.) as subscribing witnesses.

That petitioner does not know of any codicil to said last will and testament, nor is there any (*codicil*) to the best of (*her*) information and belief.

That the said deceased was, at the time of (*his*) death, a resident (*of the County of New York*.) and departed this life at (*White Plains, N. Y.*) on the (*sixth*) day of (*March*, 1905.)

Your petitioner further states that all the heirs, and all the next of kin of said deceased, together with their residences, are as follows, to wit:

Your petitioner, (*Anita Barclay, the widow*) of deceased who resides at (*White Plains, New York*, *George Barclay*, a son) of deceased who resides at (*White Plains, New York*, *Maud Barclay*, a daughter) of deceased who resides at (*White Plains, New York*.)

That all the above named are of sound mind, and they are all of full age except (*George Barclay, who is an infant over the age of*

Petition.

fourteen years, and Maud Barclay, who is an infant) under the age of fourteen years, and resides with (her mother, Anita Barclay, at White Plains, New York.)

That said decedent left (*him*) surviving no (*wife*) child or children no adopted child or children, no issue of any deceased child or children, no issue of any deceased adopted child or children, no father or mother, no brother or sister of the half or the whole blood, no issue of any deceased brother or sister, no uncle, no aunt, and no issue of any deceased uncle or aunt, except as above stated.

That your petitioner prays for an order directing the service of the citation herein without the State or by publication, pursuant to sections 2522 and 2523 of the Code of the Civil Procedure, upon such of the above-named persons as are hereinbefore stated to be non-residents of the State of New York, or whose names and residences are unknown.

That no petition for the probate of said will, or for letters of administration on said estate, has been heretofore filed in this or any other Surrogate's Court of this State.

Your petitioner further prays that a citation issue to the above-named persons to attend the probate of the said last will and testament, and that the same may be proved as a will of real and personal property, and that letters testamentary may be issued thereon to the (*executrix*), who may qualify thereunder.

Dated, (*New York, March 19th, 1905.*)

(ANITA BARCLAY,)

Petitioner.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(ANITA BARCLAY,) the petitioner named in the foregoing petition, being duly sworn, deposes and says, that (*she*) has read the foregoing petition subscribed by (*her*) and knows the contents thereof; and that the same is true of (*her*) own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters (*she*) believes it to be true.

(ANITA BARCLAY,)

Petitioner.

Sworn to this (*19th*) day }
of (*March, 1905.*) }

(THOREDORE MANY,)

Commissioner of Deeds,

(*New York City.*)

Executor's Oath.

FORM No. 319.

Oath of Executor.

SURROGATE'S COURT,
County of (*New York*.)

In the Matter of Proving the last Will
and Testament of

(*THOMAS OAKES*.)

Deceased,

As a Will of Real and Personal Prop-
erty.

STATE OF NEW YORK, }
County of (*New York*.) } ss.:

I, (*ALEXANDER COLLISON*.) one of the executors named in the last will and testament of (*Thomas Oakes*.) late of (*the Borough of Manhattan, City of New York*.) deceased, do depose and say that I am a resident of (*No. 50 Morningside Avenue, in the Borough of Manhattan, in the City and State of New York*;) that I am a citizen of the United States, and am over twenty-one years of age, and that I will well, faithfully and honestly discharge the duties of executor of said last will and testament.

(*ALEXANDER COLLISON*.)

Sworn to this (*5th*) day }
of (*January, 1905*.) }

(*JAMES ALLEN*.)

Commissioner of Deeds,
City of New York.

Note.—This oath may be taken before a Notary Public or Commissioner of Deeds.

Affidavit Of Value.

FORM No. 320.

Probate of Will — Affidavit of Estimated Value of Estate.

SURROGATE'S COURT,
County of (*New York*.)

In the Matter of Proving the last Will
and Testament of

(*JAMES BARCLAY*.)

Deceased,

As a Will of Real and Personal Prop-
erty.

STATE OF NEW YORK, }
County of (*New York*.) } ss.:

(*ANITA BARCLAY*.) being duly sworn, says: That she is the executrix-petitioner herein. That the above-named decedent died on the (*sixth*) day of (*March*, 1905,) at (*White Plains, New York*.)

That the estimated value of the real property in this State, of which said decedent died seized, is (*twenty-five thousand*) dollars.

That the estimated value of the personal property of which said decedent died possessed, is not over (*fifty*) dollars.

That the names of the heirs-at-law and next of kin of said decedent, their places of residence, and relationship to the decedent, are as follows:

Name.	Residence.	Relationship.
(<i>Anita Barclay, White Plains, New York, widow.</i>)		
(<i>George Barclay, White Plains, New York, son.</i>)		
(<i>Maud Barclay, White Plains, New York, daughter.</i>)		

That the names and places of residence of the legatees and devisees in said will, the amount or value of each legacy, and the estimated value of any real property devised therein, are as follows:

Waiver Of Citation.

Name of legatee
of devisee.

Residence.

Amount or value of legacy
—value of devise.

(*Anita Barclay, White Plains, N. Y.*)
(*George Barclay, White Plains, N. Y.*)
(*Maud Barclay, White Plains, N. Y.*)

ANITA BARCLAY.

Sworn to before me, this }
(19th) day of (*March, 1905.*) }

(THEODORE MAN,)

Commissioner of Deeds,
New York City.

FORM No. 321.

Probate of Will — Waiver of Citation.

SURROGATE'S COURT,
County of (*New York.*)

In the Matter of Proving the last Will
and Testament of

(*WILLIAM WILSON,*)
Deceased,

As a Will of Real and Personal Prop-
erty.

} Waiver of Citation.

To the Surrogate's Court of the County of (*New York:*)

I, (*EARL WILSON,*) of (*Yonkers, New York,*) the under-
signed, an heir of and next of kin of (*William Wilson,*) deceased
do hereby appear in person and waive the issue and service of a
citation in the above-entitled matter, and consent that said instru-
ment, bearing date (*November 4, 1894,*) be forthwith admitted to
probate.

Dated (*Yonkers, N. Y., May 5, 1904.*)

(*EARL WILSON.*)

Signed in the presence of

(*ANDERSON BETTS.*)

Citation.

STATE OF NEW YORK, }
 County of (*Westchester*,) } ss.:

Be it known, that on the (*fifth*) day of (*May*,) one thousand nine hundred and (*four*,) before me the undersigned, a (*Notary Public*,) in and for the State of New York, duly commissioned and sworn, residing in the County of (*Westchester*,) personally came and appeared (*Earl Wilson*,) to me personally known, and known to me to be the same person described in and who executed the above waiver and consent, and (*he*) acknowledged the same to be (*his*) act and deed.

IN TESTIMONY WHEREOF, I have hereunto
 subscribed my name and affixed my seal of office,
 [L. S.] the day and year last above written.

(*WILLIARD EVERETT*,)

Notary Public,
 (*Westchester*) County.

FORM No. 322.

Citation to Probate.

THE PEOPLE OF THE STATE OF NEW YORK, BY THE
 GRACE OF GOD FREE AND INDEPENDENT,

To (*George Shaw, Frederick Shaw, Margaret Jamieson and Winifred Jamieson*,) the (*husband*,) heirs and next of kin of (*Eleanor Shaw*,) deceased, send greeting:

WHEREAS, (*Mortimer Shaw*,) of (*the City of New York*,) has lately applied to the Surrogate's Court of our County of (*New York*,) to have a certain instrument in writing, consisting of (*five*) *typewritten pages*,) relating to (*both real and personal*) property, duly proved as the last will and testament of (*Eleanor Shaw*,) late of the County of (*New York*,) deceased, therefore, you and each of you are cited to appear before the Surrogate of our County of (*New York*,) at his office in the County of (*New York*,) on the (*21st*) day of (*June*,) one thousand nine hundred and (*five*) at (*half-past ten*) o'clock in the (*fore*) noon of that day, then and there to attend the probate of the said last will and testament.

And such of you as are hereby cited, as are under the age of twenty-one years, are required to appear by your guardian, if you

Affidavit Of Service.

have one, or if you have none, to appear and apply for one to be appointed, or in the event of your neglect or failure to do so, a guardian will be appointed by the Surrogate to represent and act for you in the proceeding.

IN TESTIMONY WHEREOF, we have caused the seal of the Surrogate's Court of the said County of (*New York*) to be hereunto affixed.

[L. S.] Witness, Hon. (*Abner C. Thomas*), a Surrogate of our said County of (*New York*), at said County, the (*2nd*) day of (*June*), in the year of our Lord one thousand nine hundred and (*five*.)

(*JAMES DONNELLY*),

Clerk of the Surrogate's Court.

Note.— In New York County the original citation must be returned to the probate clerk before one o'clock P. M. on the day preceding the return day, with sworn proof of service.

FORM No. 323.

Affidavit of Service of Citation.

SURROGATE'S COURT,
County of (*New York*.)

IN THE MATTER of Proving the
Last Will and Testament of
(*ELEANOR SNOW*), Deceased, as
a Will of Real and Personal Prop-
erty.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*WILLIAM K. WILLIAMS*) of (*New York City*), being duly sworn, says that he is over the age of twenty-one years; that he made personal service of the within citation in the above-entitled special proceeding on the persons named below, whom deponent knew to be the persons mentioned and described in said citation, by delivering to and leaving with each of them personally

Affidavit Of Service.

a true copy of said citation, as follows: On the (18th) day of (March, 1907), at (312 Madison Ave., City of New York), their place of residence on (George Snow and Frederick Snow) on the (19th) day of (March, 1907) at (Mineola, County of Nassau), their place of residence, on (Margaret Emerson) and on (Winifred Emerson, an infant under fourteen) by leaving with said infant personally and with (Margaret Emerson), the (mother) of said infant and the person with whom she resides, a true copy of said citation.

(WILLIAM K. WILLIAMS.)

Sworn and subscribed before

me, this (20th) day of (March, 1907.)

(GEORGE GENTON),

Notary Public,

(N. Y.) Co.

ADMINISTRATION.

FORM No. 324.

Petition for Letters of Administration.

SURROGATE'S COURT,
County of (*New York*.)

In the Matter of the Application for
Letters of Administration on the
Goods, Chattels and Credits of
(*LOUISA G. PRAY*),
Deceased.

To the Surrogate's Court of the County of (*New York*.)

The petition of (*OLIVIA J. LITTLEFIELD*) respectfully shows:

That your petitioner is a resident of (*Maplewood, York County, in the State of Maine*.) and is the full sister of the above-named (*Louisa G. Pray*), deceased, and of full age; that said deceased departed this life at (*the Borough of Manhattan, City of New York*.) on the (*13th*) day of (*February, 1905*.) without leaving any last will and testament to the best of your petitioner's knowledge, information or belief; that your petitioner has made a diligent search and inquiry for a will of said deceased, and has not found any, nor obtained any information that she left any; that the said deceased died possessed of certain personal property in the County and State of New York, and that the value of all the personal property, wherever situated, of which the deceased died possessed, does not exceed the sum of (*one thousand*) (\$1,000) dollars.

That your petitioner has been informed and verily believes that said deceased left surviving your petitioner, a (*sister*) of deceased; and (*Margaret Glidden*), a (*sister*) of deceased, who resides at (*Kensington, in the State of New Hampshire*.) only next of kin; that said deceased was and was at or immediately previous to her death a resident of the County of (*New York*.) and that said deceased has left (*her*) surviving no (*husband*.) child or children, no adopted child or children, no issue of any deceased child or

Petition.

children, no issue of any deceased adopted child or children, no father or mother, no brother or sister of the half or the whole blood, no issue of any deceased brother or sister, no uncle, no aunt, and no issue of any deceased uncle or aunt, except as above stated.

That a search of the records of this court shows that no application has ever been made thereto for the probate of a will of said deceased or for letters thereon or upon her estate, and your petitioner is informed and verily believes that no such application has ever been made to the Surrogate's Court of any other county of this State.

Your petitioner, therefore, prays for an order directing the service of the citation herein without the State or by publication, pursuant to sections 2522 and 2523 of the Code of the Civil Procedure, upon such of the above-named persons as are hereinbefore stated to be non-residents of the State of New York, or whose names and residences are unknown, and that a decree of the said Surrogate's Court of the County of (*New York*) issue appointing your petitioner administratrix of the goods, chattels and credits of said deceased.

(*OLIVIA J. LITTLEFIELD.*)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

I, *OLIVIA J. LITTLEFIELD*, do solemnly swear and declare that I will well, honestly and faithfully discharge the duties of administratrix of the goods, chattels and credits of (*Louisa G. Pray*.) deceased, according to law.

(*OLIVIA J. LITTLEFIELD.*)

Sworn to before me, this }
(10th) day of (*June*, 1907.) }

(*ARTHUR WOOD*.)

Notary Public,

(*N. Y.*) Co.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*OLIVIA J. LITTLEFIELD*.) the above-named petitioner, being duly sworn, doth depose and say, that (*she*) has read the foregoing petition subscribed by (*her*) and knows the contents

Citation.

thereof, and that the same is true to (*her*) own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters (*she*) believes it to be true.

(*OLIVIA J. LITTLEFIELD.*)

Subscribed and sworn to before
me, this (10th) day of (*June*, 1907.) }

(*ARTHUR WOOD,*)

Notary Public,

(*N. Y.*) Co.

FORM No. 325.

Renunciation of Right to Letters.

SURROGATE'S COURT,

County of (*New York.*)

In the Matter of the Application for
Letters of Administration on the
Estate of

(*LOUISA G. PRAY,*)

Deceased.

I, (*Margaret M. Glidden,*) of (*Freedom, New Hampshire,*) a
(*sister*) of (*Louisa G. Pray,*) deceased, do hereby renounce all
right to letters of administration on the estate of said deceased.

(*MARGARET M. GLIDDEN.*)

(Acknowledgment.)

FORM No. 326.

Citation.

THE PEOPLE OF THE STATE OF NEW YORK, BY THE
GRACE OF GOD, FREE AND INDEPENDENT,

To (*Edgar Poe and Richard Poe,*) send greeting:

You and each of you are hereby cited and required personally
to be and appear before our surrogate of the County of New York,
at the Surrogate's Court of said county, held at the County Court

Citation.

House in the County of (*New York*) on the (*tenth*) day of (*December*, 1904,) at (*half-past ten*) o'clock in the (*fore*)noon of that day, then and there to show cause why a decree should not be made awarding letters of administration of the estate of (*Nathaniel Poe*,) late of (*the Borough of Manhattan, City of New York*,) deceased, to (*Allan Poe*) or to such other person or persons having a prior right as may be entitled thereto; and such of you as are hereby cited as are under the age of twenty-one years, are required to appear by your guardian, if you have one, or if you have none, to appear and apply for one to be appointed, or in the event of your neglect or failure to do so, a guardian will be appointed by the surrogate to represent and act for you in the proceeding.

IN TESTIMONY WHEREOF, we have caused the seal of the Surrogate's Court of the said County of New York to be hereunto affixed.

[L. s.] Witness, Hon. (*Abner C. Thomas*,) a Surrogate of our said County, at the County of (*New York*,) the (*second*) day of (*December*,) in the year of our Lord one thousand nine hundred and (*four*,)
(*JAMES A. DONNELLY*,)

Clerk of the Surrogate's Court.

Note.—In New York County, the citation with sworn proof of service or with admission of service duly acknowledged and certified in like manner as a deed to be recorded in the county must be returned to the Clerk of the Surrogate's Court before one o'clock p. m. on the day preceding the return day.

GENERAL GUARDIAN.

NOTE.

The petition for the appointment of a general guardian must show :

1. Whether the father or mother are known to be alive and if living their last known residence.
2. The names of the nearest relatives of the minor resident in the county.
3. When either father or mother is living, and the petition asks for the appointment of some other person, circumstances which render the appointment of another person expedient must be stated, and the petition must ask that a citation be issued to either the father or mother, or both, to show cause why such other person should not be appointed.

FORM No. 327.

Petition for Appointment of General Guardian — Infant Under 14.

SURROGATE'S COURT,

(New York) County.

In the Matter of the Application for
Letters of Guardianship for

(MYRA A. MURRAY,)

Infant.

To the Surrogate's Court of the County of *(New York:)*

THE PETITION of *(Catherine Bergen,)* of the County of *(New York,)* residing at *(No. 16 West 16th street, in the Borough of Manhattan, City of New York,)* respectfully sheweth:

That your petitioner is *(the maternal grandmother of Myra A. Murray,)* a minor, who resides with petitioner, and that neither the father nor the mother of the said minor is living.

That said minor is a resident of the County of *(New York,)* and is under fourteen years of age. That said minor was *(ten)* years of age on the *(third)* day of *(November)* last past.

Petition — Infant Under 14.

That the nearest relatives of said minor residing in the County of (*New York*) are (*a brother, William A. Murray,*) who resides at (*78 Park Avenue, in the Borough of Manhattan, City of New York,* whose consent to the appointment of your petitioner is hereto annexed and your petitioner.)

That said minor is entitled to personal property to the value of about (*one thousand*) dollars, as your petitioner is informed and verily believes, and that the same consists of (*stocks and bonds.*)

That said minor is entitled to the income from certain real estate amounting annually to the sum of (*no*) dollars.

And that to protect and preserve the legal rights of said minor it is necessary that some proper person should be duly appointed the guardian of (*her*) person and estate, said minor having now **no** general or testamentary guardian to the knowledge and belief of your petitioner.

Your petitioner, therefore, prays * that you issue a decree nominating and appointing (*your petitioner, Catherine Bergen,*) the guardian of the person and estate of said minor, until (*she*) arrives at fourteen years of age, and until another guardian shall be appointed. And your petitioner will ever pray.

(*CATHERINE BERGEN.*)

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

(*CATHERINE BERGEN,*) the above-named petitioner, being duly sworn, deposes and says, that (*she*) has read the foregoing petition subscribed by (*her,*) and knows the contents thereof, and that the same is true to (*her*) own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters (*she*) believes it to be true.

(*CATHERINE BERGEN.*)

Subscribed and sworn to before me, }
this (*5th*) day of (*December, 1904.*) }

(*THOMAS OLIPHANT,*)

Notary Public,

(*New York*) County.

* Where there are relatives entitled to notice of the application for letters within the County of New York, whose consents to the appointment prayed for cannot be submitted with the petition, the petition should ask that a citation issue directed to such persons to show cause on a certain day why letters of guardianship should not be granted to the person named in the petition.

Consent — Oath.

(Consent.)

I, (*CATHERINE BERGEN*,) do hereby consent to become the guardian of the above-mentioned minor, pursuant to the prayer of the foregoing petitioner.

(*CATHERINE BERGEN*.)

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On this (*first*) day of (*December*, 1904,) before me came (*Catherine Bergen*,) to me known to be the individual described in and who executed the within consent, and acknowledged that (*she*) executed the same.

(*NATHAN MAUXON*.)

Notary Public,

(*New York*) County.

(Oath.)

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

I, (*CATHERINE BERGEN*,) residing at (*16 West 16th street, in the Borough of Manhattan, City of New York*,) do solemnly swear and declare that (*I*) will well, honestly and faithfully discharge the duties of general guardian of the person and estate of (*Myra A. Murray*,) a minor, according to law.

Sworn to before me, this }
(*1st*) day of (*December*, 1904.) }

(*NATHAN MAUXON*.)

Notary Public,

(*New York*) County.

Petition — Infant Over 14.

FORM No. 328.

Petition for Appointment of General Guardian — Infant Over 14.

SURROGATE'S COURT,

(New York) County.

In the Matter of the
Application for Letters of Guardian-
ship for

(ANDREW-BRADY,)

Infant.

To the Surrogate's Court of the County of (New York:)

THE PETITION of (Andrew Brady,) of the County of (New York,) residing at (729 Lexington avenue, in the Borough of Manhattan, City of New York,) respectfully sheweth:

That your petitioner is a resident of the County of (New York,) and is a minor over fourteen years of age, and was (sixteen) years of age on the (twenty-first) day of (September,) last past; that (Thomas Brady,) the father of your petitioner and (Eleanor Brady,) his mother, are both deceased and the nearest relative of your petitioner residing in the County of (New York or elsewhere) is (Peter Brady, the brother of your petitioner's father with whom your petitioner has resided and by whom he has been supported and educated for the past eight years;) that your petitioner is entitled to certain property and estate, and that to protect and preserve the legal rights of your petitioner, it is necessary that some proper person should be duly appointed the guardian of (his) person and estates during (his) minority, your petitioner having now no general or testamentary guardian to (his) knowledge or belief. Your petitioner therefore prays that you will issue a decree appointing (Peter Brady, an uncle of your petitioner,) residing at (729 Lexington Ave., in the Borough of Manhattan, City of New York,) as such guardian.

And your petitioner will ever pray.

(ANDREW BRADY.)

Dated, (New York, the tenth) day of (October, 1904.)

STATE OF NEW YORK, }
County of (New York,) } ss.:

(Andrew Brady,) the petitioner named in the foregoing petition, being duly sworn, deposes and says that he has read the

Consent.

foregoing petition subscribed by (*him*) and knows the contents thereof, and that the same is true to (*his*) own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters (*he*) believes it to be true.

(*ANDREW BRADY.*)

Subscribed and sworn this }
(10th) day of (*October*, 1904.) }

(*JAMES OLIVER,*)

Notary Public, (*New York*) County.

(Consent.)

I, (*Peter Brady,*) do hereby consent to be appointed the guardian of the person and estate of the above-named minor during (*his*) minority.

(*PETER BRADY.*)

STATE OF NEW YORK, }
County of (*New York*), }^{ss.:}

On this (*fifth*) day of (*October*, 1904,) before me came (*Peter Brady,*) to me known to be the individual described in and who executed the within consent, and acknowledged that he executed the same.

(*JAMES OLIVER,*)

Notary Public, (*New York*) County.

STATE OF NEW YORK, }
County of (*New York*), }^{ss.:}

(*Peter Brady,*) being duly sworn, deposes and says, that he is acquainted with the property and estate of the above-named minor, and that the same consists of real and personal estate; and that the personal estate of said minor does not exceed the sum of (*one thousand*) dollars, or thereabouts; and that the annual rents of the real estate of said minor do not exceed the sum of (*fifteen hundred*) dollars, or thereabouts.

(*PETER BRADY.*)

Sworn to this (*5th*) day of }
(*October*, 1904,) before me, }

(*JAMES OLIVER,*)

Notary Public, (*New York*) County.

Inventory And Account.

(Oath.)

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

I, (*Peter Brady*,) residing at (*729 Lexington Ave., in the Borough of Manhattan, City of New York*,) do solemnly swear and declare that I will well, honestly and faithfully discharge the duties of general guardian of the person and estate of (*Andrew Brady*,) minor, according to law.

(PETER BRADY.)

Sworn to before me, this (*5th*) }
 day of (*October, 1904*.) }

(JAMES OLIVER,)

Notary Public, (*New York*) County.

FORM No. 329.

Inventory and Account of General Guardian.

SURROGATE'S COURT,
 County of (*New York*.)

In the matter of the Judicial Settlement of the Account of Proceedings of

(JOHN DOE,)

General Guardian,

of

(RICHARD ROE and MARY ROE,)

Infants.

To the Surrogate's Court of the County of (*New York*.)

I, (*John Doe*,) residing at (*210 Halsey street*,) in (*the Borough of Brooklyn, City of New York*,) do hereby render the following account of my proceedings as general guardian of (*Richard Roe and Mary Roe*,) infants.

On the (*5th*) day of (*April, 1903*,) letters of guardianship on the estate of said infants were granted to me by this court. On the (*tenth*) day of (*April, 1903*,) I caused to be filed in the office of the Surrogate of this county, a true and full inventory and account.

Inventory And Account.

of each article or item of personal property belonging to said infants, pursuant to sections 2842 and 2843 of the Code of Civil Procedure; and annually thereafter, to wit, on the (*second*) day of (*April*, 1904,) I caused to be filed in the office of said Surrogate annual inventories and accounts of the personal property of said infants, as prescribed by the sections of the Code of Civil Procedure above specified; the last of which said inventories and accounts was so filed on the (*second*) day of (*April*, 1904,) and the value of the personal property of said infants then remaining in my hands amounted to the sum of (*eighteen thousand*) dollars.

Schedule "A" hereto annexed contains a statement of all property belonging to my wards which came into my hands upon assuming the office of general guardian.

Schedule "B" hereto annexed contains a statement of all property which has come into my hands since said (*second*) day of (*April*, 1904,) together with a statement of all debts due said wards collected by me, and also of all moneys and interest received by me for which I am legally accountable.

Schedule "C" hereto annexed contains a statement of all property of said wards now remaining in my hands, and a full and true description of the amount and nature of each investment made by me since my appointment.

Schedule "D" hereto annexed contains a statement of all property changed in schedules "A" and "B" *not* now remaining in my hands, together with a statement of the manner and purposes of its disposal.

Schedule "E" hereto annexed contains a statement in form of debit and credit of all moneys received and disbursed by me on account of said wards since the said (*second*) day of (*April*, 1904,) and distinctly states the balance now remaining in my hands.

Schedule "F" hereto annexed contains the names, ages and places of residence of the wards for whom I have acted as general guardian.

Schedule "G" hereto annexed contains a statement of all other facts affecting my administration as such general guardian.

I charge myself as follows:

With amount of property as per schedule "A"....	\$....
With amount of increase as per schedule "B"....	\$....

Total	\$....
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Inventory And Account.

I credit myself as follows:

With amount as per schedule "D"	\$....
With amount of disbursements as per schedule "E"	\$....
	<hr/>
Total	\$....
	<hr/> <hr/>

Leaving a balance of (*fourteen thousand and fifty*) dollars to be distributed to said wards, subject to the amount of my commission and the expenses of this accounting. The said schedules which are severally signed by me are a part of this account.

(JOHN DOE,)

General Guardian of

(*Richard Roe and Mary Roe,*) Infants.

STATE OF NEW YORK, }
County of (*Kings,*) } ss.:

I, (*John Doe,*) the general guardian of (*Richard Roe and Mary Roe,*) infants, being duly sworn, do depose and say, that the foregoing account and schedules contain to the best of my knowledge and belief a full and true statement of all my receipts and disbursements on account of said wards, and of all money and other personal property of the said wards which have come to my hands or have been received by any other person by my order or authority or for my use since my appointment; and of the value of all such property, together with a full and true statement and account of the manner in which I have disposed of the same, and of all the property remaining in my hands at the present time, and a full and true description of the amount and nature of each investment made by me since my appointment; and I do not know of any error or omission in the foregoing account and schedule to the prejudice of said wards.

(JOHN DOE,)

General Guardian.

Sworn to before me, this }
(4th) day of (*April,* 1905.) }

(WILLIAM WILCOX,)

Notary Public,

(N. Y.) Co.

SPECIAL GUARDIANS.

FORM No. 330.

Petition of Infant Over Fourteen for Special Guardian.*
SURROGATE'S COURT,
(*New York*) County.

In the Matter of the Application
of
(*WILLIAM TAYLOR and JOHN
ASTOR*), as Trustees under the
Last Will and Testament of (*WIL-
LIAM ASTOR*), Deceased, for
Leave to Resign Testamentary
Trusts under Section 2814 of the
Code of Civil Procedure, and for
Leave to Have their Accounts as
Such Testamentary Trustees Judici-
ally Settled.

To the Surrogate's Court of the County of (*New York*):

The petition of (*Charles Astor*), at present residing at (621
Fifth Avenue, in the Borough of Manhattan, City of New York),
respectfully sheweth:

First. That your petitioner is a resident of the county of (*New
York*), is an infant over the age of fourteen years, to-wit: of the
age of (*twenty*) years on the (*18th*) day of (*July, 1906*); that
his father is dead and that he at the present time resides with his
mother (*Sarah Astor*), at the above address; that his said mother
(*Sarah Astor*), is his general guardian.

Second. That your petitioner is one of the parties to the above-
entitled proceeding and is informed and verily believes that he is
entitled to certain property and estate, and that his interest therein
arises out of the fact that he is one of the beneficiaries under the
will of (*William Astor*), deceased who was his (*father, but that*

* Petition made after service of citation on infant.

Petition — Infant Over 14.

said interest will not vest in possession in him until he arrives at the age of thirty-five years.)

Third. That at the *City of New York* on *February 9, 1907*), your petitioner was served personally with a (*supplemental*) citation in this proceeding, which (*supplemental*) citation is returnable on the (*19th*) day of (*February, 1907*).

Fourth. That your petitioner desires to appear herein by a special guardian to protect and preserve the rights and interests which he may have in this proceeding; that he has informed his mother and general guardian of his desire to appear by special guardian other than through her and his said mother has made no objection to this application but, on the contrary, approves the same, as appears by her affidavit hereto annexed.

Fifth. That your petitioner is informed and verily believes that (*George Kent*), a counsellor-at-law, residing at (*25 Park Place, in the Borough of Brooklyn, City of New York,*) and having an office at (*132 Liberty Street in the Borough of Manhattan*), is a competent and proper person to protect the interests of your petitioner herein; and that he has no interest whatever in this proceeding, and is not connected in business with the attorney or counsel of or any party to the proceeding.

WHEREFORE, your petitioner prays that an order may be made herein appointing the said (*George Kent*), special guardian to appear herein, and protect the rights and interests of your petitioner.

And your petitioner will ever pray.

Dated (*New York, January 18, 1907.*)

STATE OF NEW YORK, } (*CHARLES ASTOR.*)
County of (*New York*), } ss.:

(*CHARLES ASTOR*), being duly sworn deposes and says, that he is the petitioner above-named; that he has read the foregoing petition, and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters believes it to be true.

(*CHARLES ASTOR.*)

Sworn to before me, this
(*18th*) day of (*January, 1907*).

(*EDWARD JAMES*),

Notary Public,

(*N. Y.*) Co., No. (296).

Consent.

FORM No. 331.

Consent of Proposed Guardian.

SURROGATE'S COURT,
(*New York*) County.

In the Matter of the Application
of
(*WILLIAM TAYLOR and JOHN
ASTOR*), as Trustees under the last
Will and Testament of (*WILLIAM
ASTOR*), Deceased, for Leave to
Resign Testamentary Trusts under
Section 2814 of the Code of Civil
Procedure, and for Leave to Have
their Accounts as such Testamentary
Trustees Judicially Settled.

I, (*GEORGE KENT*), an attorney and counsellor-at-law, residing at (*25 Park Place, in the Borough of Brooklyn, City of New York*), having an office at (*132 Liberty street, in the Borough of Manhattan*), do hereby consent to become special guardian for (*Charles Astor*), an infant, and one of the parties to the above-entitled proceeding.

Dated (*February 19, 1907*).

(*GEORGE KENT.*)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*19th*) day of (*February, 1907*), before me personally appeared (*George Kent*), to me known and known to me to be the person mentioned in and who executed the foregoing consent, and he did acknowledge to me that he executed the same.

(*EDWARD JAMES*),

Notary Public,
(*N. Y.*) Co. (*296*).

Affidavit Of Proposed Guardian.

FORM No. 332.

Affidavit of Proposed Special Guardian.

SURROGATE'S COURT,
(*New York*) County.

In the Matter of the Application
of
(*WILLIAM TAYLOR and JOHN
ASTOR*), as Trustees under the last
Will and Testament of (*WILLIAM
ASTOR*), Deceased, for Leave to
Resign Testamentary Trusts under
Section 2814 of the Code of Civil
Procedure, and for Leave to Have
their Accounts as such Testamentary
Trustees Judicially Settled.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*GEORGE KENT*), being duly sworn says: That he is the person mentioned in the consent hereto annexed; that he is in all respects competent to protect whatever rights the petitioner (*Charles Astor*) may have in the above-entitled proceeding; that he has no interests adverse to those of the said infant nor has he had any interest whatever herein; that he is not connected in business with the attorney or counsel of any party to this proceeding.

(*GEORGE KENT.*)

Sworn to before me, this
(*19th*) day of (*February*, 1907).

(*EDWARD JAMES*),

Notary Public,

(*N. Y.*) Co. (296).

Affidavit Of Parent.

FORM No. 333.

Affidavit of Parent of Infant.

SURROGATE'S COURT,
(*New York*) County.

In the Matter of the Application
of
(*WILLIAM TAYLOR and JOHN
ASTOR*), as Trustees under the last
Will and Testament of (*WILLIAM
ASTOR*), Deceased, for Leave to
Resign Testamentary Trusts under
Section 2814 of the Code of Civil
Procedure, and for Leave to Have
their Accounts as such Testamentary
Trustees Judicially Settled.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*SARAH ASTOR*), being duly sworn, says: I am the (*mother*) of (*Charles Astor*), the petitioner herein, and am also his general guardian. Said petitioner resides with me at the present time at (*No. 621 Fifth Avenue, in the Borough of Manhattan, City of New York*).

Said petitioner has informed me that he desires to apply to this court for the appointment of (*George Kent*), as his special guardian in this proceeding; and I approve such application. I have not influenced the said petitioner in any way in the choice of a guardian, but his selection was his own act.

(*SARAH ASTOR.*)

Sworn to before me, this
(*18th*) day of (*February*, 1907).

(*EDWARD JAMES*),
Notary Public,
(*N. Y.*) Co. (296).

Order.

FORM No. 334.**Order Appointing Special Guardian (Infant Over Fourteen).**

At a Term of the Surrogate's Court, held in and for the County of (*New York*), at (*the Court-room in the Hall of Records*), on the (*25th*) day of (*February*, 1907).

PRESENT:

Hon. (*ABNER C. THOMAS*.)

In the Matter of the Application
of
(*WILLIAM TAYLOR and JOHN ASTOR*), as Trustees under the last Will and Testament of (*WILLIAM ASTOR*), Deceased, for Leave to Resign Testamentary Trusts under Section 2814 of the Code of Civil Procedure, and for Leave to Have their Accounts as such Testamentary Trustees Judicially Settled.

On reading and filing the petition of (*Charles Astor*), verified the (*18th*) day of (*February*, 1907); the consent of (*George Kent*), verified the (*19th*) day of (*February*, 1907); together with the affidavit of (*Sarah Astor*), verified the (*18th*) day of (*February*, 1907), it is

ORDERED that (*George Kent*), counsellor-at-law, be, and he hereby is, appointed special guardian for (*Charles Astor*), in the above-entitled proceedings and authorized and directed to appear therein and take such steps as he may deem proper for the protection of the interests of said infant.

(*ABNER C. THOMAS*),

Surrogate,
(*N. Y.*) Co.

ACCOUNTS.

FORM No. 335.

Petition for Voluntary Accounting of Executor.

SURROGATE'S COURT,
(*New York*) County.

In the Matter of the Judicial Settlement
of the
Account of (*JOHN T. DALTON*,) as
Executor of the last Will and Testa-
ment of (*JAMES REID*,) Deceased.

To the Surrogate's Court of the County of (*New York*):

The petition of (*John T. Dalton*,) residing at (*No. 200 East Nineteenth street, Borough of Manhattan, City of New York*,) respectfully shows:

That letters testamentary, under the last will and testament of (*James Reid*,) late of the County of (*New York*,) deceased, who died possessed of personal property located in the County of (*New York*,) were granted by this court to your petitioner on the (*16th*) day of (*May*, 1904;) that the only persons interested in the estate of said decedent as creditors, or persons claiming to be creditors, or as widow, next of kin, legatees, or otherwise, together with their places of residence, are, to the best of your petitioner's knowledge, information and belief, as follows, to wit:

(*Marie Daniels*,) widow of deceased, who resides at (*Hotel Imperial, New York City*.)

(*Isabel Reid*,) a daughter of deceased, who resides at (*The Hague, Holland*.)

(*Theresa Johnson*,) a legatee of deceased, who resides at (*538 West Forty-seventh street, Borough of Manhattan, New York City*.)

That all of the above persons are of full age and of sound mind.

That the only persons interested in the estate of said decedent as creditors, or persons claiming to be creditors of the estate, are the following:

Petition.

Comptroller of the State of (*New York*).

The Receiver of Taxes of the (*Borough of Manhattan*).

(*Names.*)

(*Addresses.*)

That no bonds were given or required.

That more than one year has elapsed since the issuance of said letters testamentary.

Your petitioner, therefore, prays that his account may be judicially settled, and that the persons above mentioned may be cited to attend the settlement.

Dated, (*New York, October 20, 1905.*)

(*JOHN T. DALTON,*)

Petitioner.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*John T. Dalton,*) being duly sworn, says that he is the petitioner herein; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*JOHN T. DALTON.*)

Sworn to before me, this (*20th*)

day of (*October, 1905.*)

(*WARREN ELLIS,*)

Notary Public,

(*N. Y.*) County.

Account And Schedules.

FORM No. 336.

Executor's Account.

SURROGATE'S COURT,
(*New York*) County.

In the Matter of the Judicial Settlement
of the
Account of (*JOHN T. DALTON*,) as
Executor of the last Will and Testa-
ment of (*JAMES REID*,) Deceased.

To the Surrogate's Court of the County of (*New York*):

I, (*John T. Dalton*,) of the (*Borough of Manhattan, City of New York*,) do render the following account of my proceedings as executor of the last will and testament of (*James Reid*,) late of the County of (*New York*,) deceased.

On the (16th) day of (*May*, 1905,) testamentary letters were issued to me as executor, by the Surrogate's Court of the County of (*New York*,)

On the (7th) day of (*November*, 1905,) I caused an inventory of the personal estate of the deceased to be filed in this office, which personal estate therein set forth, amounts by appraisement of the appraisers duly appointed to (*twenty-nine thousand, nine hundred forty-four and 14/100*) dollars (\$29,944.14.)

Schedule A, hereto annexed, contains a statement of all the property contained in said inventory, which property consists solely of money on deposit; it also contains a statement of all debts due the said estate, and mentioned in said inventory which had been collected, and also of all interest or moneys received by me for which I am legally accountable.

Schedule B, hereto annexed, contains a statement that there were no debts owing to the said decedent or his estate, and no articles of personal property other than the moneys on deposit set forth in Schedule A. No other assets than those in said inventory, or herein set forth, have come into my possession or knowledge, and all the increase or decrease in the value of any assets of said deceased is allowed or charged in said Schedules A and B.

 Account And Schedules.

Schedule C, hereto annexed, contains a statement of all moneys paid by me for funeral and other necessary expenses for said estate, together with the reasons and object of such expenditure.

Schedule D, hereto annexed, contains a statement of all the claims of creditors presented to and allowed by me, or disputed by me, and for which judgment or decree has been rendered against me, together with the names of the claimants, the general nature of the claim, its amount, and the time of the rendition of the judgment; it also contains a statement of all moneys paid by me to the creditors of the deceased and their names and the time of such payment.

Schedule E, hereto annexed, contains a statement of all moneys paid to the legatees, widow, or next of kin of the decedent.

Schedule F, hereto annexed, contains the names of all persons entitled as widow, legatee, or next of kin of the deceased, to a share of his estate, with their places of residence, degree of relationship and a statement of which of them are minors, and whether they have any general guardian, and if so, their names and places of residence, to the best of my knowledge, information and belief.

Schedule G, hereto annexed, contains a statement of all other facts affecting my administration of said estate, my rights and those of others interested therein.

I charge myself as follows:

With amount of inventory.....	(\$29,944 14)	
With amount of increase as shown by Schedule A.....	(1,923 43)	
		(\$31,867 57)
With amount of expenditures set forth in Schedule C.....	(\$1,115 51)	
With amount of expenditures set forth in Schedule D.....	(1,722 85)	
With amount of payments set forth in Schedule E.....	(28,543 67)	
		(31,382 03)

Leaving a balance of..... (\$485 54)
to be distributed to those entitled thereto, subject to the deduction of the amount of my commissions and the expense of this accounting. The said schedules, which are severally signed by me, are part of this account.

(JOHN T. DALTON.)

Schedules.

Schedule A.

(1903.)

(Dec. 31. Amount of inventory)..... (\$29,944 14)

(1904.)

(Feb. 19. Draft per collection on G. Amsy & Company).....	(400 00)
---	----------

(May 26. Interest to date).....	(711 46)
---------------------------------	----------

1905.

(May 1. Interest to date)..... (635 51)

(Oct.	15. Interest to date).....	(176 46)
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(\$31,867 57)

(JOHN T. DALTON.)

Schedule B.

No debts and no personal property other than the amount on deposit, as per Schedule A.

Schedule C.

1904.

Voucher No.

Jan.	11. Funeral expenses.....	\$330 00	(1)
------	---------------------------	----------	-----

12. <i>City Hospital, hospital expenses..</i>	50 51	(2)
---	-------	-----

15. Frederick Mortimer, M. D., balance professional services.....	50 00	(3)
---	-------	-----

<i>May</i>	24.	<i>Charles Keep, professional services.....</i>	50 00	(3)
<i>June</i>	9.	<i>Laura L. L., professional services.....</i>	100 00	(4)

June	9. Irene J. Jessup, professional services.....	100 00	(4)
Sept	22. Gladys H.	25 00	(5)

Sept. 22.	Charles Keep, professional services.....	25 00	(5)
27	John T. Dally.....	100 00	(6)

27. <i>John T. Dalton, executor, account</i>	100 00	(6)
<i>commissions.</i>	250 00	(7)

1905.

Feb.	3. Charles Keep, professional services	210 00	(8)
------	--	--------	-----

\$1,115 51

(JOHN T. DALTON.)

Schedules.

1904.	Schedule D.	Voucher No.
Nov.	7. Receiver of Taxes, taxes on lots in Mapleton, L. I.....	\$64 06 (9)
	15. Morrison & Co., paints, etc.....	\$11 00
	15. John W. Masury, & Son, paints, oils, etc.....	8 50
		19 50 (10)
	18. Marine insurance on monument..	4 50 (11)
Dec.	20. State Comptroller, transfer tax..	290 24 (12)
	31. H. Anderson, monument.....	1,057 50 (13)
1905.		
Jan.	3. Hiram Cohn, provisions, \$10 31	
	3. H. A. Schafer, pro- visions.....	2 50
		12 81 (14)
Oct.	4. Receiver of taxes, tax on personal estate.....	274 24 (15)
		\$1,722 85

(JOHN T. DALTON.)

1904.	Schedule E.	Voucher No.
May	17. Mrs. Isabel Reid.....	\$7,000 00 (16)
1905.		
Aug.	1. Mrs. Isabel Reid.....	19,143 67 (17)
	30. Mrs. M. R. Reid.....	2,400 00 (18)
		\$28,543 67

(JOHN T. DALTON.)

Schedule F.

All persons who are entitled as widow, legatee or next of kin of the deceased to a share of his estate, their places of residence, degree of relationship, and whether they are adults or minors, are as follows:

(Marie Daniels, widow) of deceased, who resides at (the Hotel Imperial, New York City.)

Schedules.

Isabel Reid, a daughter) of deceased, who resides at (*The Hague, Holland.*)

(*Theresa Johnson, a legatee*) of deceased, who resides at (538 *West Forty-seventh street, Borough of Manhattan, New York City.*)

The persons above mentioned are all of full age and sound mind.
(*JOHN T. DALTON.*)

Schedule G.

After the payment of the expenses, debts and legacies above set forth in Schedules "C," "D" and "E," there remains in my hands a balance of..	(\$485 54)
The total amount of money actually paid by me in administering the affairs of the estate was.....	(31,867 57)
Upon which my commissions as executor amount to	(508 67)
I have credited myself in the foregoing schedule with (\$250,) on account of my commissions, leaving a balance due me for commissions of...	(248 67)
After the payment of my commissions in full there will remain to the credit of the estate (to be applied to the payment of the expenses of the accounting and distributed to the persons entitled thereto	(236 87)

SURROGATE'S COURT,
(*New York*) County.

In the Matter of the Judicial Settlement
of the
Account of (*JOHN T. DALTON,*) as
Executor of the last Will and Testa-
ment of (*JAMES REID,*) Deceased.

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

I, (*John T. Dalton,*) of the (*Borough of Brooklyn, City of New York,*) being duly sworn, say, that the charges made in the foregoing account of proceedings in schedules annexed for moneys

Verification.

paid by me to the creditors, legatees and next of kin, and for necessary expenses, are true; that I have been charged therein with all the interest for moneys received by me and embraced in said account, for which I am legally accountable; that the charges therein for the increase or decrease in value of any assets are correctly made; and that I do not know of any error in said account or anything omitted therefrom which may in any wise prejudice the rights of any party interested in the said estate. I further say that the sums under (*twenty*) dollars (\$20.00) charged in the said account, for which no vouchers or other evidence of payment are produced; or for which I may not be able to produce vouchers or other evidences of payment, have actually been paid and disbursed by me as charged; and that said account contains, to the best of my knowledge and belief, a full and true statement of all my rights and disbursements on account of the estate of said decedent, and of all moneys and other property belonging to said estate which have come into my hands, or which have been received by any other person by my order or authority, for my use, and that I do not know of any error or omission in the account to the prejudice of any creditor or other person interested in the estate of said decedent.

(*JOHN T. DALTON.*)

Sworn to before me this (20th)

day of (*October*, 1905.)

(*WARREN ELLIS.*)

Notary Public,

(*N. Y.*) County.

Bills Of Costs.

FORM No. 337.

Bill of Costs on Accounting.

SURROGATE'S COURT,
County of (*New York.*)

In the Matter of the Judicial Settlement of the Account of	}	(<i>RICHARD ROE,</i>) as <i>Executor</i> of
		<i>the last Will and Testament of</i>
		(<i>JOHN DOE,</i>)
		Deceased.

N. B.—See sections 2561 and 2562 of the Code of Civ. Proc., and in New York County Rule 22 of the Surrogate's Court.

COSTS.

Costs pursuant to section 2561 of the Code of Civil Procedure	\$
Contest	
No contest	
Days occupied in the trial or hearing, <i>less two, and less adjournments.</i>	
Motions for New Trial	
Allowance to accounting party under section 2562, Code of Civil Procedure, viz.:	
Days occupied in trial or hearing, <i>less adjournments</i>	
Days necessarily occupied in <i>preparing account</i>	
Days necessarily occupied in otherwise preparing for trial	
TOTAL COSTS AND ALLOWANCE.	\$
DISBURSEMENTS	
TOTAL	\$

Affidavit As To Disbursements.

DISBURSEMENTS.

For Serving Citation on	parties.....	\$
" Publication Citation, New York Law Journal.		
" " "	
" Referee's Fees	.....
" Appraiser's Fees	.....
" Stenographer's Fees	.....
" Affidavits and Acknowledgments.....		
" Postage	.....
" Certified Copies	.....
" Certified Copy Decree.....		
" Satisfactions of Decree.....		
" Certificate of Filing Satisfactions.....		
" Necessary Copies of Papers, as follows:		
" Attendance of Witnesses.....		

\$

STATE OF NEW YORK, }
County of (*New York*), } ss.:

, being duly sworn, says, that he is.....
the attorney and counsel for in the
above entitled proceeding; that the foregoing disbursements have
been actually made or will be necessarily incurred therein, by or
in behalf of the said . That such disbursements are
correctly stated, and are for reasonable and necessary expenses in
this proceeding.

Deponent further says that the time stated in the foregoing
bill of costs as having been occupied as therein specified, was
actually, substantially and necessarily so occupied and employed
in this matter by deponent, and that the time occupied on each day
in the rendition of the services aforesaid, and their nature and ex-
tent in detail, are, as hereinafter set forth, opposite the date of the
rendition of the services and under the appropriate head of partic-
ular class of services rendered in the above entitled proceeding.

That no compensation has been paid or given out of the funds
of the estate of the said deceased, for or on account of the services
specified herein.

(*Statement of amount of time engaged should be attached.*)

Sworn to before me, this }
day of }

.....

ADOPTION.

NOTE.

I. Consent is necessary:

- (a) Of the minor if he is over twelve.
- (b) Of the foster parents, husband and wife, unless
 1. They are living separate.
 2. Adoption is joint.
- (c) Of parents or surviving parent of a legitimate child, except
 1. Of parent who has abandoned child.
 2. Of parent deprived of civil rights.
 3. Of parent divorced for adultery or cruelty.
 4. Of parent adjudged insane or habitual drunkard.
 5. Of parent judicially deprived of custody of child.
- (d) Of person having legal custody of child:
 1. If the parents are not living.
 2. In case the parent's consent is not required.

II. Proceedings:

The following papers should be presented:

- (a) The necessary consents.
- (b) An agreement of the foster parents to adopt minor and treat him as their own lawful child.
- (c) Petition, showing:
 1. Age of minor as nearly as may be.
 2. Facts relating to custody.
 3. Facts upon which adoption is sought.
- (d) When the legal custodian (society or otherwise) resides without the county, his or their written and acknowledged consent, or that of the proper officer (if a society), certified as required in case of a deed.
- (e) — 1. All persons whose consent is necessary must appear before the surrogate, except in (d) *supra*.
 2. The necessary consent and agreements must be severally acknowledged by the necessary persons before the surrogate and signed by them.

Petition.

III. Order and filing:

Granted if satisfied that adoption will promote best interests of child.

Order:

1. Recites (*a*) the reasons (and if no father or mother living, or no person having legal custody, facts to be stated).
- (*a*) The proceedings:
 2. Allows and confirms the adoption.
 3. Directs that the minor shall "thenceforth be regarded and treated in all respects as the child of the foster parent or parents.

All the papers must be filed in the office of the county clerk.

FORM No. 338.

Adoption of Infant — Petition Where Child in Custody of Society.

SURROGATE'S COURT,

(*New York*) County.

<p>In the Matter of the Adoption of (<i>JOHN HEMP</i>,) a minor, by <i>George Hengsten</i> and <i>Elizabeth Hengsten</i>, foster parents.</p>

To the Surrogate's Court of the County of (*New York*):

The petition of (*George Hengsten*) and (*Elizabeth Hengsten*) respectfully shows to this court as follows:

I. That the above-named (*John Hemp*) is a minor, born the (*7th*) day of (*July*, 1898,) and is now of about the age of (*four*) (*4*) years and (*seven*) (*7*) months.

II. That said (*John Hemp*) is an indigent child and was under the care of the (*State Charities Aid Association of the City of New York*,) a corporation organized and existing under the laws of the State of New York, and having power to place children for adoption.

Petition.

III. That your petitioners are adults and lawfully married, and reside at (No. 382 *West Fourth*) street, in the (*Borough of Brooklyn, City and State of New York*), and both consented to this adoption.

IV. That annexed hereto and made a part hereof, is the consents of your petitioners, (*George Hengsten*) and (*Elizabeth Hengsten*), as foster parents, and the (*State Charities Aid Association of the City of New York*.)

V. That the said foster parents and said minor are present in court.

VI. Annexed hereto and made a part hereof, is also an agreement on the part of your petitioners as such foster parents to adopt and treat the said (*John Hemp*) as their lawful child.

WHEREFORE, your petitioners pray for an order of this honorable court, directing that the said (*John Hemp*) shall henceforth be regarded and treated in all respects as the child of your petitioners, (*George Hengsten*) and (*Elizabeth Hengsten*), as such foster parents.

(*GEORGE HENGSTEN*),
(*ELIZABETH HENGSTEN*.)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*George Hengsten*) and (*Elizabeth Hengsten*), his wife, being duly sworn depose and say, that they are the petitioners in the above entitled proceeding; that they have read the foregoing petition and know the contents thereof to be true of their own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters they believe it to be true.

(*GEORGE HENGSTEN*),
(*ELIZABETH HENGSTEN*.)

Sworn to before me, this (26th) }
day of (*February*, 1903.) }

(*ABNER C. THOMAS*),
Surrogate.

FORM No. 339.

Adoption of Infant — Agreement and Consent.

SURROGATE'S COURT,
(*New York*) County.

In the Matter of the Adoption
of

JOHN HEMP, a minor, by *George Hengsten* and *Elizabeth Hengsten*,
foster parents.

AGREEMENT, made the (21st) day of (*February*, 1903,) by and between (*George Hengsten*,) residing at (*No. 382 West Fourth street, in the Borough of Brooklyn, City of New York*,) and (*Elizabeth Hengsten*,) residing at (*the same place*,) parties of the first part, hereinafter called foster parents, and the (*State Charities Aid Association of the City of New York*,) party of the second part.

WHEREAS, the said foster parents are desirous of adopting, pursuant to the provisions of the Domestic Relations Law of the State of New York, a male child of the age of (*four*) (4) years and (*seven*) (7) months, and to treat such child as their own lawful child, and to extend to such child all benefits, privileges and rights contemplated by such statute; and

WHEREAS, said party of the second part approves of and consents to said contemplated adoption of said minor;

NOW, in consideration of the premises, the said parties hereby mutually covenant, agree and consent as follows, that is to say:

I. That said foster parents hereby consent, covenant and agree, and each of them for himself and herself covenants and agrees, to adopt and treat (*John Hemp*,) the said minor, as their own lawful child, hereby extending and assuring to such minor all rights, benefits and privileges incident to such relation, and hereby severally assume and engage to fill all responsibilities and duties of parents in respect to such minor.

II. And the said party of the second part hereby consents to such adoption and covenants and agrees to acquiesce therein and

 Agreement.

to refrain from doing or causing to be done any act or thing whatsoever inconsistent or in any way interfering with the rights, privileges or duties of such child when adopted.

(*STATE CHARITIES AID ASSOCIATION.*)

(By *G. T. Canfield*, (Seal.)
President.)

(*GEORGE HENGSTEN*.)

(*ELIZABETH HENGSTEN*.)

STATE OF *NEW YORK*, }
County of (*New York*), } ss.:

On this (26th) day of (*February*, 1903,) before me personally appeared (*George Hengsten* and *Elizabeth Hengsten*,) proven by the oath of (*Lewis J. Smith*, an attorney at law,) to be the individuals described in and who executed the foregoing instrument; and they duly severally acknowledged to me that they executed the same.

(*ABNER C. THOMAS*.)

Surrogate.

STATE OF *NEW YORK*, }
County of (*New York*), } ss.:

On the (21st) day of (*February*, 1903,) before me personally came (*George F. Canfield*,) to me known, who being duly sworn, did depose and say, that he resided in the City of (*New York*;) that he is an officer of the corporation described in and which executed the within agreement and consent; that he knew the seal of said corporation and the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the said corporation, and that he signed his name thereto by like order.

(*JOHN BERRY*)

Notary Public,
(*New York*) County.

Proof Of Custody.

FORM No. 340.

Adoption of Infant — Proof of Custody.

SURROGATE'S COURT,
(*New York*) County.

<p>In the Matter of the Adoption of (<i>JOHN HEMP</i>,) a minor, by <i>George Hengsten</i> and <i>Elizabeth Hengsten</i>, foster parents.</p>	}
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STATE OF *NEW YORK*, }
County of (*New York*,) } ss.:

(*George F. Canfield*,) being duly sworn, deposes and says, that he is an officer of the (*State Charities Aid Association of the City of New York*,) to wit: (*president*.) That on the (*26th*) day of (*June*, 1901, *John Hemp*,) then about the age of (*two*) (2) years and (*eleven*) (11) months, was surrendered to the care and custody of the said (*Association*) by (*Frank Hemp*,) his father, the only living parent of said child. That on the said date the said (*Frank Hemp*) executed an instrument surrendering said child, in pursuance of section 1, chapter 438, of the laws of 1884, and that a copy of said instrument is hereto annexed.

Deponent further says that the (*State Charities Aid Association*) is a corporation organized and existing under the laws of the State of New York and is duly authorized by law to place for adoption children left to its care.

(*GEORGE F. CANFIELD*.)

Sworn to before me this (*21st*) }
day of (*February*, 1903.) }

JOHN BERRY,)

Notary Public,

(*New York*) Co.

Surrender Of Child.

FORM No. 341.

Surrender of Child.

(New York, June 26th, 1901.)

I, (*Frank Hemp*,) do hereby certify that I am the (*father*) of the child named (*John Hemp*,) aged (*two*) (2) *years*, now staying at (No. 115 *Ten Eyck* street, *Brooklyn*;) that the mother of said child is (*Annie Hemp*,) deceased, and that no parent, guardian or relative of said child is able to support and properly train said child.

For these reasons, I, (*Frank Hemp*,) do hereby voluntarily and unconditionally surrender the said child (*John Hemp*,) under the provisions of section 1 of chapter 438 of the laws of 1884, to the care and custody of the (*State Charities Aid Association for the Care of Destitute Children*,) and I hereby pledge myself not to interfere, directly or indirectly, with the custody or management of said child in any way.

(Signature) (*FRANK HEMP*.)

Witnesses:

(*HENRY SCHULZ*.)(*GERTRUDE CLARKSON*.)STATE OF NEW YORK, }
County of (*Kings*,) } ss:

On the (26th) day of (*June*, A. D. 1901,) before me personally appeared (*Frank Hemp*,) to me known and known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

(*HENRY SCHULZ*.)

(Seal.)

Notary Public,
(*Kings*) Co.

Order.

FORM No. 342.

Adoption of Infant — Order Allowing and Confirming Adoption.

SURROGATE'S COURT,
(*New York*) County.

In the Matter of the Adoption
of

(*JOHN HEMP*,) a minor by *George Hengsten* and *Elizabeth Hengsten*,
foster parents.

The above-named (*George Hengsten*) and (*Elizabeth Hengsten*) having presented their duly verified petition for the adoption by them of the above-named (*John Hemp*,) a minor under the age of twelve (12) years, and said (*George Hengsten*) and (*Elizabeth Hengsten*) having appeared personally before me on the (26th) day of (*February*, 1903,) and been examined; and

WHEREAS, from said petition and examination it appears to my satisfaction that the said minor had been abandoned by its father, the only living parent of said minor, and that said minor was a ward of the (*State Charities Aid Association of the City of New York*,) and that said child is now in the custody of the petitioners, and that said child is under the age of twelve (12) years; and

WHEREAS, it further appears to my satisfaction that said (*George Hengsten*) and (*Elizabeth Hengsten*,) are husband and wife, and that the moral and temporal interests of said child will be promoted by his adoption by the petitioners, and that they have duly executed the consent and agreement required by the statute to adopt said (*John Hemp*) and have acknowledged the same before me; and

WHEREAS, it appears that the (*State Charities Aid Association of the City of New York*) has consented to such adoption;

NOW, upon reading and filing said petition and consent and agreement, and upon motion of (*Lewis J. Smith*,) attorney for petitioner, it is

ORDERED, that the said adoption of the said (*John Hemp*,) a minor under the age of twelve (12) years, by the petitioners,

Order.

(*George Hengsten and Elizabeth Hengsten*,) his wife, be, and the same hereby is, allowed and confirmed; and it is further

ORDERED, that the said minor be henceforth regarded and treated in all respects as the child of the petitioners, the said (*George Hengsten*) and (*Elizabeth Hengsten*,) his wife.

ORDERED that this order be filed and recorded in the office of the Clerk of the County of (*New York*.)

Dated, (*February 26, 1903*.)

(*ABNER C. THOMAS*,)

Surrogate.

TRANSFER TAX.

FORM No. 343.

Petition for Appointment of Appraiser — Resident.

SURROGATE'S COURT,
County of (*New York*.)

In the Matter of the
Transfer Tax upon the Estate of
(*JACOB WALSH*,)
Deceased.

To the Surrogate's Court of the County of (*New York*:)

The petition of (*John L. Walsh*) respectfully shows:

First. That your petitioner is (*one of the executors of the last will of Jacob Walsh*,) deceased, and as such a person interested in the estate of the said deceased.

Second. That the said decedent departed this life on the (*24th*) day of (*March*, 1902,) at (*211 West 48th street, Borough of Manhattan, City of New York*,) that the said deceased was at the time of his death a resident of (*the said Borough, City, County*) and State of New York.

Third. That the said decedent left a last will and testament which was on the (*fifteenth*) day of (*April*, 1903,) duly admitted to probate by the above-named court and that letters (*testamentary*) on the estate of said deceased were, on the (*fifteenth*) day of (*April*, 1903,) issued to your petitioner by the Surrogate's Court of the County of (*New York*,) and that petitioner's post-office address is (*52 Broadway, New York City*.)

Fourth. That, as your petitioner is informed and believes, the property of said decedent passing by said will or some portion thereof or some interest therein, is or may be subject to the payment of the tax imposed by the law in relation to taxable transfers of property.

Fifth. That all persons who are interested in said estate and who are entitled to notice of all proceedings herein, and their post-office addresses, are as follows:

 Petition For Appraiser — Resident.

The Comptroller of the State of New York.

(*Jane Walsh, Sidney, Delaware county, N. Y.*)

(*Charles S. Walsh, 12 Portland Place, Brooklyn, N. Y.*)

(*Maud Sumner, 41 Amsterdam avenue, New York City.*)

That all the above named are of full age and sound mind, except (*Maud Sumner*), who is (*sixteen years of age.*)

WHEREFORE your petitioner prays that you will appoint one of the persons designated as appraisers in the County of (*New York*), as provided by law, as appraiser.

Dated, (*New York, August 6th, 1903.*)

(*JOHN L. WALSH,*)

Petitioner.

(*Verification.*)

 FORM No. 344.

Transfer Tax — Order Designating Appraiser — Resident.

At a Surrogate's Court, held in and for the County of
(*New York*), at the (*Hall of Records*), in the
County of (*New York*) on the (*20th*) day of
(*September, 1903.*)

PRESENT:

Hon. (*ABNER C. THOMAS,*)

Surrogate.

In the Matter of the Transfer Tax upon the Estate of (<i>JACOB WALSH,</i>) Deceased.

On reading and filing the petition of (*John L. Walsh, one of the executors*) of said decedent, I do hereby, pursuant to the requirement of chapter 658 of the Laws of 1900, direct (*William Halpin,*) Esq., one of the appraisers appointed by the State Comptroller under said statute, to fix the fair market value of the

Affidavit For Appraisal.

property which was of the above-named decedent, and which is subject to the payment of any tax imposed by article X., chapter 908, Laws of 1896, and the acts amendatory thereof and supplemental thereto.

(*ABNER C. THOMAS,*)

Surrogate.

FORM No. 345.

Transfer Tax — Affidavit for Appraisal.

SURROGATE'S COURT,

(*New York*) County.

In the Matter
of the
Transfer Tax upon the Estate
of
(*JACOB WALSH,*)
Deceased.

STATE OF NEW YORK, }
County of (*New York.*) } ss.:

(*JOHN L. WALSH,*) being duly sworn, says that he resides at (200 *East 19th street*) in the (*Borough of Manhattan, City of New York.*) That he is the executor of the last will and testament of the above-named decedent, and letters testamentary were duly issued to him by the Surrogate's Court of the County of (*New York*) on the (15th) day of (*April, 1903.*) That said decedent at the time of his death, was a resident of the (*Borough of Manhattan, City, County and State of New York,*) and departed this life on the (24th) day of (*March, 1902,*) at the (*Borough of Manhattan, City of New York.*)

That the following is a statement of all the personal property owned by decedent and located in the State of New York at the time of his death, together with the value thereof.

Cash on deposit with (*Messrs. Bliss & Bliss.....*) \$29,944 14)

Affidavit For Appraisal.

That decedent left a last will and testament, a true copy of which is hereto annexed, which will was admitted to probate in the Surrogate's Court in the County of (*New York*) on the (*15th*) day of (*April*, 1903,) on which day letters testamentary were issued to deponent, who duly qualified.

That decedent did not die possessed of any silverware, jewelry, household furniture, personal effects, statuary, works of art, paintings, pictures, books, bric-a-brac, horses, carriages, except as set forth in the inventory and appraisement herein and which was set aside by the appraiser for his widow under § 2713 of the Code of Civil Procedure; nor was he possessed of any mortgages, promissory notes or deposits in trust companies or savings banks other than as herein specified.

That deponent knows of no life insurance or interest in any estate in the State of New York. That deponent knows of no reversion that fell in by reason of decedent's death.

That the following is a statement of all the real property within the State of New York owned by decedent at the time of his death:

(*Four (4) lots in Mapleton, Borough of Brooklyn, New York, That said lots are worth \$125.00 each as appears by the appraisal of William P. Rae, hereto annexed.*)

That deponent knows of no transfer or conveyance of real or personal property made by decedent prior to his death, in the contemplation of death or to take effect at or after his death.

That deponent knows of no power of disposition given to decedent of property by the will of another. That deponent has made diligent search for property of every kind, nature and description left by the decedent, and he has been unable to discover any except that mentioned in this affidavit, and deponent verily believes that the property above set forth is all the property, real and personal, possessed by the decedent within the State of New York at the time of his death.

That the liabilities of the decedent's estate, funeral expenses, legal expenses, administration expenses, commission of executors and necessary disbursements as far as they can be ascertained are as follows:

(*Amount of note owing to First National Bank*).. (\$10,000 00)
 (*Amount paid to Long Island City Hospital for
 expenses incurred while decedent was an inmate
 of said hospital*)..... (30 51)

Affidavit For Appraisal.

(Amount paid for funeral expenses and monument).....	(\$1,330 00)
(Amount paid to Dr. Harry S. Norton for professional services).	(50 00)
(Administration expenses) (estimated).....	(500 00)
(Legal expenses) (estimated).....	(1,000 00)
(Commissions of executors)	(844 44)
<hr/>	
Total.	(\$13,754 95)
<hr/>	

That the above debts were due at the time of decedent's death and said debts and expenses above set forth except those estimated have been paid.

That the names of the beneficiaries, their relation to the decedent and the amount of each legacy or distributive share, are as follows:

(JANE WALSH, widow).....	\$8,284 59
(CHARLES S. WALSH, son).....	4,142 29
(MAUD SUMNER, grand-daughter).....	4,142 30

That all of said beneficiaries are of full age and sound mind.

(JOHN L. WALSH.)

Sworn to before me, this }
(28th) day of (September, 1903.) }

(WILLIAM SHIRDEN,)

Notary Public (Kings) County.

Cert. filed in (New York) County.

Order Fixing Tax.

FORM No. 346.

Transfer Tax — Order Fixing Amount of Tax (on Report of Appraiser).

At a Surrogate's Court, held in and for the County of
(*New York*,) at (*the Hall of Records*,) in the
County of (*New York*,) on the (*16th*) day of (*De-*
cember, 1906.)

PRESENT:

Hon. (*ABNER C. THOMAS*,)

Surrogate.

In the Matter	}
of the	
Transfer Tax upon the Estate of	
(<i>MARCUS DALRYMPLE</i> ,)	
Deceased.	

On reading the report of (*John Doe*,) Esq., the appraiser, filed herein on the (*14th*) day of (*December*, 1906,) and on motion of (*James J. Maxwell*,) attorney for the (*State Comptroller*) herein, it is

ORDERED AND ADJUDGED, that the cash value of the property referred to in said report, the transfer of which is subject to the tax imposed by the act relating to taxable transfers, and the tax to which the said transfers are liable, is as follows:

BENEFICIARY.	CASH VALUE OF INTREST.	PER CENT.	TAX AS- SESSED THEREON
(<i>Margaret P. Dalrymple</i>) (<i>widow</i>)	\$500,000	1	\$5,000
(<i>Margaret D. Brown</i>) (<i>daughter</i>).	200,000	1	2,000
(<i>Marcus Dalrymple, Jr.</i>) (<i>son</i>)..	100,000	1	1,000

(*ABNER C. THOMAS*,)

Surrogate.

Petition For Appraiser — Non-resident.

FORM No. 347.

Transfer Tax — Petition for Appointment of Appraiser — Non-resident.

SURROGATE'S COURT,
County of (*New York*.)

In the Matter of the Appraisal, under the Act in relation to Taxable Trans- fers of property, of the Property of (<i>DAVID WOLF</i> ,) Deceased.	}
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To the Surrogate's Court of the County of (*New York*:)

The petition of (*Florence Wolf*) and (*David Wolf*) respectfully shows:

First: (*David Wolf*), the above-named decedent, died on the (*first*) day of (*May*, 1900). At the time of his death he was a resident of (*Boston, Mass.*). He left a will which on the (*twelfth*) day of (*June*, 1905,) was admitted to probate by this court as the will of a resident of the State of (*Massachusetts*,) and on the same day letters testamentary thereon were duly issued by this court to your petitioners as executors thereof. Your petitioners are also trustees and beneficiaries under the said will.

Second: As your petitioners are informed and believe, some portion of the property belonging to the said decedent at the time of his death is claimed to be, or may be, subject to the tax imposed by the laws of the State of New York, in certain cases upon gifts, legacies, inheritances and transfers.

Third: That as your petitioners are informed and believe, all the persons who are interested in the estate of the said decedent and who are entitled to notice of proceedings herein are, together with their respective places of residence and post-office addresses, as follows, to-wit:

Your petitioner (*Florence Wolf*), who is the widow of the said decedent, and who resides at, and whose postoffice address is (*Boston, Mass.*).

Your petitioner, (*David Wolf*), who is a son of the said decedent, and who resides at, and whose postoffice address is, (*Boston, Mass.*).

Petition For Appraiser — Non-resident.

(*Martin Glynn*), as Comptroller of the State of New York, whose office for the transaction of business as such Comptroller is at, and whose postoffice address is, Albany, New York.*

(*Thomas Riley*), who is a beneficiary under the said will, and who resides at, and whose postoffice address is, No. (9 *East Twenty-fourth street, Borough of Manhattan, New York City, New York*.)

(*Delia Riley*), who is (*the wife of said Thomas Riley*) and a beneficiary under the said will, and who resides at, and whose postoffice address is, (*No. 9 East Twenty-fourth street, Borough of Manhattan, New York City, New York*.)

In addition to the foregoing are the issue of the said (*Thomas Riley*), who are referred to in the said will. Their names are unknown to your petitioners, and they, or some of them, are infants.

In addition to the foregoing are the following, who are named in said will as beneficiaries upon certain contingencies therein referred to, viz.:

(*Saint Luke's Hospital, which is situated at, and the postoffice address of which is, Cathedral Heights, 113th street and Amsterdam avenue, Borough of Manhattan, New York City, New York*.)

(*The Catherine Mission, which is situated at, and the postoffice address of which is, No. 201 South street, Borough of Manhattan, New York City, New York*.)

All of the persons above enumerated are of sound mind and all of full age except as above stated.

WHEREFORE, your petitioners pray for an order appointing some competent person as appraiser of such portion, if any, of the property of the said decedent which belonged to him at the time of his death as is subject to the tax above referred to, and of the several estates and interests, if any, in the said property which are subject to the said tax; and directing such appraiser to give such notice of such appraisement to those entitled thereto as to this court may seem proper, and for such other further relief as may be just.

(*SHEPARD & SHEPARD*),

Attorneys for Petitioners,

(No. 271 Broadway,

New York City.)

Dated, (*New York, January 23, 1907*.)

* Service upon the State Comptroller in proceedings in New York, Kings and Queens counties may be made upon his attorneys in fact in these counties. The name and address of the attorney in fact may be obtained from the clerk of the Surrogate's Court.

Order Designating Appraiser.

STATE OF NEW YORK, }
 County of (*New York*.) } ss.:

(*DAVID WOLF*,) being duly sworn, says: That I am one of the petitioners herein. I have read the foregoing petition and know its contents. It is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

(*DAVID WOLF*.)

Sworn to before me this
 (23d) day of (*January*, 1907.)

(*WILLIAM E. CARMICHAEL*,)

Notary Public, (22) (*N. Y.*) Co.

FORM No. 348.

Transfer Tax — Order Designating Appraiser — Nonresident.

At a Surrogate's Court, held in and for the County of (*New York*,) at the (*Hall of Records*,) in the Borough of *Manhattan* in the City of *New York*, on the (6th) day of (*February*, 1907.)

PRESENT:

Hon. (*ABNER C. THOMAS*,)

Surrogate.

In the Matter of the Appraisal, under the Act in relation to Taxable Transfers of property of the property of (*DAVID WOLF*,) Deceased.

Upon reading and filing the petition of (*Florence Wolf and David Wolf*,) sworn to the (23rd) day of (*January*, 1907,) I do hereby, pursuant to the requirement of chapter 658 of the Laws of 1900, direct (*John Doe*,) Esq., one of the appraisers appointed by the State Comptroller under the said statute, to fix the

Notice Of Appeal To Surrogate.

fair market value at the time of the transfer of the property which was of the above-named decedent, and which is subject to the payment of any tax imposed by article 10, chapter 908 of the Laws of 1896, and the acts amendatory thereof and supplemental thereto.

(*ABNER C. THOMAS,*)

Surrogate.

FORM No. 349.

Notice of Appeal to Surrogate from Report of Appraiser.

SURROGATE'S COURT,

(*New York*) County.

In the Matter of the Appraisal under
the Act in Relation to Taxable Trans-
fers of Property, of the Property of
(*JOSIAH QUINCY,*)
Deceased.

Sirs:

PLEASE TAKE NOTICE, that (*Margaret P. Quincy,*) individually and as executrix of the last will and testament of (*Josiah Quincy,*) deceased, (*Josiah Quincy, Jr.*) and (*Mary Quincy Gerard*) are dissatisfied with the appraisal herein of the property of the said (*Josiah Quincy,*) deceased, and hereby object to the report of the appraiser filed herein on the (4th) day of (*December, 1904,*) and to the order or decree made thereon assessing and determining the transfer tax in respect to the property of the said decedent entered herein on the (7th) day of (*December, 1904,*) and hereby appeal to the Surrogate from the said appraisal and said assessment and determination of said taxation and from the said order or decree.

The appellants appeal from such parts of the aforesaid report and of the order entered thereon on the (7th) day of (*December, 1904,*) as adjudged that (*three hundred thousand dollars in said report stated to be "cash on deposit in the National Commercial Bank of New York, special account"*) is subject to taxation under

Notice Of Appeal To Surrogate.

article 10, chapter 908, of the laws of 1896, and assessed tax on the transfer of same. The grounds upon which said appeal are taken are:

First: That (*the decedent was not at the time of his death a resident of the State of New York, but was at that time a resident of the State of Connecticut, and that such residence fixes the legal situs of said asset.*)

Second: That (*the said asset, from the taxation of which these appellants appeal, did not, at the date of decedent's death, have a legal situs within the State of New York.*)

Third: That (*if such asset may for any purpose be deemed to have been at the date of decedent's death property within the State of New York, the same was only casually, transitorily, and temporarily within the State of New York, the same being within this State only because it was delivered to one Ernest Tompson while decedent was traveling through the State of New York on his way from the State of Connecticut to the State of California, and was stricken ill and departed this life before he was able to leave the State of New York; and because between the time the said asset was delivered to the said Ernest Tompson and the time of the decedent's death, decedent was physically unable to transact any business in respect of said asset or in respect of any other matters whatsoever. That the said asset was so delivered in payment of an indebtedness due to decedent from one William Strong and that decedent never authorized, had knowledge of, or consented to the receipt of such payment, and that the said "special account" was opened and said alleged moneys were deposited therein without the authority, knowledge or consent of the decedent.*)

(FLOWER & SANDERS,)

Attorneys for Appellants,
(31 Nassau Street,
New York City.)

To

(JAMES J. MAXWELL,) Esq.,
Attorney for State Comptroller,
(32 Liberty Street, New York.)

(THOMAS F. DONNELLY,) Esq.,
Clerk of the Surrogate's Court
of the County of (New York.)

Order Remitting To Appraiser.

FORM No. 350.

Order Remitting to Appraiser After Reversal.

At a Surrogate's Court, held in and for the County of
(*New York*), at the Hall of Records in (*the Borough of Manhattan, City of New York*), on the
(*20th*) day of (*February*, 1905.)

PRESENT:

Honorable (*ABNER C. THOMAS*),

Surrogate.

In the Matter of the Appraisal under
the Act in Relation to Taxable
Transfer of Property, of the Prop-
erty of

(*JOSIAH QUINCY*),

Deceased.

An appeal to the (*Appellate Division of the Supreme Court, in the First Judicial Department*) having been taken by (*the Comptroller of the State of New York*), from an order heretofore made herein and entered in the office of (*the Surrogate of the County of New York*) on the (*7th*) day of (*January*, 1904,) in so far as said order adjudged that an appeal by (*Margaret P. Quincy, Josiah Quincy, Jr., and Mary Quincy Gerard from the order fixing the tax herein, entered in the Surrogate's Court on the 6th day of December, 1903, was sustained*), and in so far as said order of (*February 7, 1904*), adjudged that said order (*fixing the tax*) be vacated and set aside and the report of the appraiser herein be remitted to him for further consideration and report and an order upon the said appeal having been thereafter duly made by the said (*Appellate Division of the Supreme Court*) and duly entered in the office of the clerk of said court on the (*8th*) day of (*February*, 1905,) whereby the order so appealed from was, so far as appealed from, (*reversed*) with (*ten dollars*) (\$10) costs to the said (*Comptroller of the State of New York*) and disbursements to be taxed, and a certified copy of the said order, together with the original case or papers upon which said appeal was heard, hereto annexed, having been filed in the office of the Surrogate of the County of (*New York*) on the (*9th*) day of (*February*, 1905,)

Remission Of Penalty — Notice Of Motion.

and the said costs and disbursements having been duly taxed at the sum of (*two hundred and forty-two and 62/100*) (\$242.62) dollars:

NOW, on motion of (*James J. Maxwell,*) attorney for (*the State Comptroller,*) it is ordered and decreed that the said order of the said (*Appellate Division of the Supreme Court*) be, and it hereby is, made the order and decree of this court, and that the said (*Comptroller of the State of New York*) recover of (*Margaret P. Quincy, Josiah Quincy, Jr., and Mary Quincy Gerard,*) the sum of (*two hundred and forty-two and 62/100*) (\$242.62) dollars, and that he have execution therefor.

(*ABNER C. THOMAS,*)

Surrogate.

Proceedings to Have Penalty for Nonpayment of Transfer Tax Remitted.

FORM No. 351.

Notice of Motion.

SURROGATE'S COURT,
(*New York*) County.

In the Matter of the Transfer Tax Upon the Estate of (<i>WALTER CARTER,</i>) Deceased.	}
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Sirs:

PLEASE TAKE NOTICE that on all the papers and proceedings herein and on the affidavit of (*George Turk,*) verified the (*14th*) day of (*February, 1907,*) we will move this court at Chambers thereof to be held at (*the Hall of Records,*) in the County of (*New York,*) on the (*19th*) day of (*February, 1907,*) at (*10:30*) o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order remitting the penalty of ten per cent. upon the tax heretofore fixed upon the estate of the above-named decedent by order of the Surrogate of said County

Remission Of Penalty — Affidavit.

of (*New York*,) made and entered on the (1st) day of (*February*, 1907,) to interest at the rate of six per cent. per annum from the date of the accrual of the said tax, to wit: the date of the death of the decedent, which occurred on the (13th) day of (*July*, 1901,) to the date of payment of said tax, provided said payment be made within twenty days after the entry of the order of said surrogate to be made upon this application.

Dated (*New York*, *February* 14th, 1907.)

(*COLE & ADAMS*,)

Attorneys for (*Caroline Carter, Executrix*,)

(32 *Liberty Street*,)

(*Borough of Manhattan*,)

(*New York City*.)

To

Hon. (*MARTIN H. GLYNN*,)

State Comptroller,

New York.

(*JOHN SEELEY*,) Esq.,

Attorney for State Comptroller,

(56 *Broadway*, *New York City*.)

FORM No. 352.

Affidavit in Support of Motion to Have Penalty Remitted.

SURROGATE'S COURT,

(*New York*) County.

<p>In the Matter of the Transfer Tax Upon the Estate of (<i>WALTER CARTER</i>,) Deceased.</p>	}
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STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*GEORGE TURK*,) being duly sworn, deposes and says, that he is an attorney-at-law and a member of the firm of (*Cole & Adams*,) attorneys for (*Caroline Carter*,) as executrix of the last

Remission Of Penalty — Affidavit.

will and testament of (*Walter Carter*,) deceased, in the above-entitled proceeding.

That the said decedent died on the (13th) day of (*July*, 1901;) that proceedings have been had herein for a determination of the transfer tax upon the estate of the said decedent as follows: On the (20th) day of (*November*, 1903,) on the petition of (*John Frame*) and (*Caroline Carter*,) executor and executrix of the last will and testament of the decedent, an order was made and filed herein, designating (*William Halpin*,) Esq., appraiser to fix the market value of decedent's estate subject to the payment of a transfer tax.

That, at the time of the issuance of the letters testamentary herein, (*John Frame*,) the executor of the will of said decedent, (*took unto himself the actual control of the estate of the testator and the possession of all of the assets of the said estate and continued in such sole control and possession until about February 1, 1906; that the said Frame mismanaged the said estate, and in October, 1904, proceedings were begun to revoke the letters testamentary issued to him as such executor; said proceedings were contested and did not conclude until January 19, 1906, on which date an order was made and filed, revoking said letters testamentary; deponent asks leave to refer to the petition, answer, amended petition and answer thereto and the said order, and the proceedings upon which same is based, as part of this affidavit with the same effect as if they were a part hereof.*

During the pendency of such litigations, said (*Frame*) failed to take any steps to conclude these proceedings and the executrix, not having the books and papers and assets of said estate in her possession, could take no steps towards that end. Shortly after said order was made (*Caroline Carter*,) the executrix of the said will, obtained from the said (*Frame*) the papers pertaining to and the assets of the said estate; shortly after she obtained the possession of said papers and assets she took immediate steps to conclude the proceedings to fix the transfer tax and has since prosecuted the same expeditiously, (*because of her unfamiliarity with the affairs of said estate as well as that of her counsel, considerable difficulty was experienced in preparing the papers required by the appraiser herein. An affidavit of considerable length was prepared and filed, but a further affidavit was required and, in August, 1906, same was filed; that thereafter numerous conferences between said appraiser and the counsel to the State Comptroller and*

Remission Of Penalty — Affidavit.

this deponent, respecting these proceedings, were had, and on the 12th day of January, 1907, the report of the appraiser herein was filed and the tax fixed by order of this court made and filed on the 1st day of February, 1907.

That more than eighteen months have elapsed since the date of the death of the said decedent and a penalty of ten per centum per annum from the date of the death of decedent to the date of payment as provided by the statute is due because of the non-payment of this tax.

That by reason of (*the mismanagement of the affairs of the estate aforesaid and the litigations between the beneficiaries under the said will and the said executor,*) there has been unavoidable delay on the part of the executrix herein; that the delay has been because of no act of hers nor of the beneficial owners of the said estate; deponent is informed and believes that because of the acts of the said (*Frame, the estate has been largely wasted and depleted so that there is now but a small part of the original estate left for distribution among the beneficiaries; practically all the cash and other assets of said estate, with the exception of 2,000 shares of the capital stock of the American Can Company, a manufacturing corporation which has no market value left after the payment of debts were used by said Frame and lost in speculation,*) and the beneficiaries have suffered great hardship because of the acts of said (*Frame;*) and it is submitted on their behalf, the penalty necessarily coming out of the residue, that the payment of the said penalty will be an unnecessary hardship.

That the executrix is desirous that this tax be paid and, in order to obtain a proper final receipt therefor from the State Comptroller, makes this application pursuant to the provisions of the said act for the remission of the penalty incurred by reason of the non-payment of such tax within eighteen months after the date of the death of the said decedent from 10 per cent. to interest at 6 per cent.

That no previous application for this order has been made.

WHEREFORE, deponent prays that an order be made, remitting the penalty upon the tax heretofore fixed herein from 10 per centum to 6 per centum, to be charged upon said tax upon the accrual thereof, to-wit: From the date of the death of the said decedent, (*July 13, 1901,*) to the date of payment, provided such payment be made within twenty days after the date of

Notice Of Settlement.

the entry of the order of the Surrogate upon this application; and for such other and further relief as to the court may seem just and proper.

(*GEORGE TURK.*)

Sworn to before me this (14th)

day of (*Februaury*, 1907.)

(*EDWARD WOOD,*)

Commissioner of Deeds,

(*New York City.*)

FORM No. 353.

Notice of Settlement of Proposed Order.

SURROGATE'S COURT,

(*New York*) County.

In the Matter of the
Transfer Tax upon the Estate of
(*WALTER CARTER,*) Deceased.

Sir:

TAKE NOTICE that the within is a copy of an order in the within entitled proceeding, which we shall present to Hon. (*Abner C. Thomas,*) at the Surrogate's Office in the (*Hall of Records,*) in the County of (*New York,*) on the (28th) day of (*February*, 1907,) at 10:30 o'clock in the forenoon of that day for settlement and signature.

Dated, (*New York, February 26, 1907.*)

Yours, etc.,

(*COLE & ADAMS,*)

Attorneys for (*Executrix,*)

(*32 Liberty Street,*)

(*New York City.*)

To

Hon. (*MARTIN H. GLYNN,*)

State Comptroller,

(*Albany, N. Y.*)

Order Remitting Penalty.

FORM No. 354.

Order Remitting Penalty.

At a Surrogate's Court held in and for the County of (*New York*), at the (*Hall of Records, New York*) County, on the (*1st*) day of (*March*, 1907.)

PRESENT:

Hon. (*ABNER C. THOMAS*),
Surrogate.

In the Matter of the
Transfer Tax upon the Estate of
(*WALTER CARTER*), Deceased.

Upon reading and filing the affidavit of (*George Turk*), duly verified the (*14th*) day of (*February*, 1907,) whereby it appears that the payment of the transfer tax as heretofore fixed has become unavoidably delayed, and good cause having been shown for such nonpayment, and due notice of motion having been given to Hon. (*Martin H. Glynn*), State Comptroller,

NOW, on motion of (*Cole & Adams*), attorneys for (*Caroline Carter*), executrix of the last will and testament of the above named deceased herein, it is

ORDERED, AND ADJUDGED, that the penalty of 10 per centum upon said tax be remitted, and that the interest be charged thereupon at the rate of 6 per centum from the date of accrual of said tax, to wit, the (*13th*) day of (*July*, 1901,) the date of death of said decedent, to the date of payment thereof, provided that payment be made within twenty days after the entry of this order.

(*ABNER C. THOMAS*),
Surrogate.

PROOF OF DEBT — BANKRUPTCY.

FORM No. 355.

Bankruptcy — Proof of Secured Debt by Corporation.
IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE (*Southern*) DISTRICT OF (*New York*.)

In the Matter of
(*CHARLES P. LAWSON*,)
Bankrupt.

UNITED STATES OF AMERICA, }
(*Eastern*) District of (*Pennsylvania*,) } ss. :

At (*Philadelphia, in the County of Philadelphia*,) in said (*Eastern*) District of (*Pennsylvania*,) on the (*eighth*) day of (*May*, 1905,) came (*Charles P. Hughes*) of said (*City of Philadelphia*,) in said (*Eastern*) District of (*Pennsylvania*,) and made oath and says that he is (*treasurer*) of the (*Western Manufacturing Company*,) a corporation incorporated by and under the laws of the State of (*New Jersey*,) and carrying on business at No. (*176 Bank*) street, in the (*City of Philadelphia*,) in the County of (*Philadelphia*) and State of (*Pennsylvania*,) and that he is duly authorized to make this proof, and says further that the said (*Charles P. Lawson*,) the person against whom a petition for adjudication of bankruptcy has been filed was, at and before the filing of said petition and still is justly and truly indebted to said corporation in the sum of (*fifteen hundred*) (\$1,500) dollars; that the said debt exists upon (*an account for \$600 for goods sold and delivered; and upon a promissory note for \$900 made by said bankrupt, bearing date January 2, 1905, and payable ninety days after date to the order of the Western Manufacturing Company*,) of which copies are hereto annexed; that the consideration of said debt is as follows: (*For the said account, goods sold and delivered by the Western Manufacturing Company between January 1, 1905, and March 11, 1905, as shown by the annexed account*) marked Exhibit A, and made a part hereof (*for the said note a balance due on account for goods sold and delivered to said bankrupt prior to January 1, 1905*;) that the said debt is now due and owing; that no note has been received for the said debt, nor any judgment rendered thereon except as aforesaid; that no part

Proof Of Debt — On Judgment.

of the said debt has been paid (*except fifty dollars on account of said merchandise account;*) that there are no set-offs or counter-claims to the same, and that said corporation has not nor has any person by its order, or to the knowledge or belief of deponent for its use had or received any manner of security for said debt whatever, except the following, which is the only security held for the said debt.

A chattel mortgage on the stock of the said bankrupt contained in the store lately occupied by him at (*No. 11 Bridge street, Borough of Brooklyn, City of New York.*)

Dated, (*January 2, 1905.*)

(*CHARLES P. HUGHES,*)
(*Treasurer of Western Manufacturing Co.*)

Subscribed and sworn to before me, }
this (*8th*) day of (*May, 1905.*) }

(*RICHARD FIELD,*)
Notary Public,
(*Philadelphia*) Co.

FORM No. 356.

Bankruptcy — Proof of Debt on a Judgment by Agent or Attorney
in Fact.

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE (*Southern*) DISTRICT OF (*New York.*)

In the Matter of (<i>THE FRANKLIN PUBLISHING COMPANY,</i>) a corporation, Bankrupt.	}	In Bankruptcy.
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UNITED STATES OF AMERICA, }
(*Eastern*) District of (*New York,*) } ss.:

At (*the Borough of Brooklyn, City of New York, County of Kings,*) in said (*Eastern*) District of (*New York,*) on the (*fifth*) day of (*January, 1905,*) came (*Perry Nichols,* of

Proof Of Debt — On Judgment.

the Borough of Brooklyn,) in the County of (*Kings,*) and State of (*New York,*) agent (or attorney in fact) of (*King, Richards & Company,*) of the (*City of New York,*) in the County of (*New York*) and State of (*New York*) and made oath, and says that (*The Franklin Publishing Company,*) the corporation by which a petition for adjudication of bankruptcy has been filed, was, at and before the filing of said petition and still is, justly and truly indebted to the said (*King, Richards & Company*) in the sum of (*three hundred and twenty-seven and 50/100*) (\$327.50) dollars; that the consideration of said debt is as follows: (*work done and material furnished in printing and binding 20,000 catalogues for the said bankrupt of the reasonable value and agreed price of \$300.00,*) for which sum, together with (\$27.50) costs, a judgment was recovered by (*King, Richards & Company*) against the said bankrupt in the (*Circuit*) Court of (*Cook county, Illinois,*) and docketed in the office of the clerk of said county on (*December 10, 1904;*) a transcript of which is hereto annexed, that said debt is now due, and that no part thereof has been paid; that no note has been received for, nor any judgment rendered upon the said debt, except as aforesaid, and that this deponent has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use or for the use of said (*King, Richards & Company*) had or received any manner of security for said debt whatever.

And this deponent further says that the reason why this deposition is made by deponent and not by a member of said firm is because all of the members of said firm are at present sojourning without the United States,* and that he is duly authorized by said firm to make this affidavit, and that it is within his knowledge that the aforesaid debt was incurred and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied.

(*PERRY NICHOLS.*)

Subscribed and sworn to before me, }
this (*5th*) day of (*January, 1905.*) }

(*RICHARD FIELD,*)

Notary Public,

(*New York*) County.

*It has been held that being absent from the country is not alone a sufficient reason.

Proof Of Debt — Individual.

FORM No. 357.

Bankruptcy — Proof of Debt (Unsecured) by Individual.
 IN THE DISTRICT COURT OF THE UNITED STATES,
 FOR THE (*Southern*) DISTRICT OF (*New York*.)

In the Matter of
 (*CHARLES P. LAWSON*),
 Bankrupt.

} In Bankruptcy.

UNITED STATES OF AMERICA, }
 (*Southern*) District of (*New York*), } ss.:

At (*the Borough of Manhattan, City and County of New York*), in said (*Southern*) District of (*New York*), on the (*20th*) day of (*December*, A. D. 1904,) came (*Frederick Lawson*), of No. (*76 Broadway, Borough of Manhattan, City of New York*) and State of (*New York*), in said (*Southern*) District of (*New York*), and made oath, and says that the said (*Charles P. Lawson*), the person against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of (*one hundred*) (\$100) dollars; that the consideration of said debt is as follows: (*professional services rendered the said bankrupt as his physician during the month of August, 1904, of the reasonable value and agreed price of \$100;*) that the said debt became due on (*September 1, 1904*),* and that no note has been received for the said debt nor any judgment rendered thereon; that no part of said debt has been paid except (*twenty-five dollars paid on account thereof on October 1, 1904;*) that there are no set-offs or counter-claims to the same; that deponent has not, nor has any person by his order or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

(*FREDERICK LAWSON*),

Creditor.

Subscribed and sworn to before me, this }
 (*20th*) day of (*December*, 1904.) }

(*RICHARD FIELD*),

Notary Public,

(*New York*) Co.

FORM No. 358.

Another Form of Proof of Debt in Bankruptcy and Power of Attorney.

IN THE DISTRICT COURT OF THE UNITED STATES.
FOR THE.....DISTRICT OF.....

In the Matter of

.....
Bankrupt.

In Bankruptcy No.

STATE OF, } ss.:
County of....., }

At in the District of
on the day of, 190., came
..... of in the county of....., in
said district of and made oath:

(1) That he is the authorized agent of
..... of, in the county of
and state of

(2) That he is one of the partnership firm of
..... consisting of himself and
of

(3) That he is the *treasurer* of the
..... a corporation incorporated by and under the laws
of the state of and carrying on business at
..... in the county of and state of
.....
and that he is duly authorized to make this proof.

(4) That the said the
person whom a petition for adjudication of bankruptcy
has been filed, was, at or before the filing of said petition and
still is, justly and duly indebted to said
(Name of Creditor.)

..... in the sum of
dollars (\$.....)

(5) That the consideration of said debt is as follows:.....
.....

Letter Of Attorney.

.....

 (5a) That the date of maturity of said debt is

.....
 (5b) That no note has been received nor judgment recovered
 therefor [*except*

.....
 (6) That no part of said debt has been paid [*except*

.....
 (7) That there are no set-offs or counter claims to the same
 [*except*

.....
 (8) That said creditor has not, nor has any person by order of
 said creditor, or to the knowledge or belief of said deponent for
 the use of said creditor, received any manner of security for said
 debt whatever, [*except the following which are the only securi-*
ties held by said creditor for said debt

.....
 (9) That this deposition is not made by the claimant [nor if it
 has been hereinbefore stated to be a corporation by its treasurer]
 in person because

.....
 and that deponent is duly authorized by his principal to make
 this deposition and that it is within his knowledge that the debt
 hereinbefore mentioned was incurred as and for the considera-
 tion, and said creditor is constituted as, hereinabove stated.

(10) LETTER OF ATTORNEY to
 Attorney-at-Law. You are hereby authorized by said creditor
 by the person making the foregoing deposition who is duly au-
 thorized thereto, to appear for and represent said creditor and
 vote for said creditor in any proceedings, or meetings, which
 may be had or called in the above entitled proceeding, in court,
 before the referee in bankruptcy or elsewhere and particularly to
 vote for said creditor in the choice of a trustee of said bankrupt
 whenever such election is held, to accept, or in your discretion
 oppose confirmation of, any composition offered by or in behalf of
 said bankrupt, and to receive and receipt for any and all moneys
 which may be or may become payable to said creditor therein
 or for or on account of said debt.

Proof Of Debt — Instructions.

In witness whereof said creditor has hereunto signed.....
 name and affixed seal, when signing the deposition pre-
 ceding, the day of 190..

.....[L. S.]

Creditor.

.....[L. S.]

Creditor.

By

Subscribed, sworn to and acknowledged before
 me this day of 190..

.....

Notary Public.

INSTRUCTIONS.

This form combines with some slight verbal changes the Official Forms Nos. 31, 32, 33, 34, 35, 36, besides a general letter of attorney, abbreviated and modified from official form No. 20, and has been approved by prominent referees in bankruptcy, as suitable for all ordinary proofs of debt under the Bankruptcy Act of 1898. *Claims arising after the filing of the petition, or unliquidated damages or for contingent liability only are not provable in bankruptcy.* The clauses are numbered for convenience of reference only. It will be noticed that the introductory clause and those numbered 4, 5, 6, 7, 8, must be used in every proof, while circumstances determine when to use the others. As to clauses 1, 2, 3, 9, see instructions B, C, D, E. (The Orders and Official Forms do not expressly authorize proof by agent in case of debt to partnership or corporation nor when required to be made by assignor but it is thought that the act itself does so by fair construction.) F, G, H, refer to certain uses of clause 5, F to clauses 5a and 5b, I to clause 10, and A, J, K, L, to every proof. Extra space in any clause may be secured by attaching paper.

(A) *In every proof*, those who may make proofs are the owners of the debts respectively at the time of the proof (except in the case of claims assigned after the filing of the petition and then the owners at that time,) and their agents or officers who can make the statements required according to the circumstances as pointed out in the Instructions where sufficient reason why it should not be made by the owner (or the designated officer, if a

Proof Of Debt — Instructions.

corporation,) is made to appear. Being out of the country is not alone a sufficient reason. The name of the court and bankrupt should be filled in at the top. The number may be supplied later. Also fill in the blank spaces shown by the dotted lines, according to the facts in the introductory clause, and in the clause marked 4. In proof made by the assignor, strike out clause 10, and "and still is" in clause 4, and the fact of the assignment and the name of the assignee may be given in any space not otherwise used. In filling in clause 5 observe F, G, or H, if the claim be of the kind there italicized. In clauses 6, 7, 8, if the printed part be true without exception strike out the word "except" and what follows. Strike out all the clauses, parts and words inapplicable or not intended to be used, and observe instructions J, K, L, as to execution, etc. Immaterial errors will be disregarded or corrected.

(B) *For proof of debt to individual by himself* strike out clauses 1, 2, 3, 9.

(C) *For proof of debt by agent* all of clauses 1 and 9 are necessary. Fill them in and strike out clauses 2, 3. In clause 1 it is better to add a statement showing, if the creditor be a firm, that fact and the names of its members, and if a corporation that fact and the state in which incorporated.

(D) *For proof of debt to partnership by a member* fill in clause 2 and strike out clauses 1, 3, 9.

(E) *For proof of debt to corporation by its treasurer* fill in clause 3 and strike out clauses 1, 2, 9. No other officer is authorized to make proof of claim of a corporation, unless there be no treasurer. In that case it may be made by the officer whose duties most nearly correspond to those of a treasurer, and he should use clause 9, stating those facts there on the dotted lines, also properly change the word "treasurer" in clause 3, and strike out clauses 1, 2 and all of clause 9 below the dotted lines.

(F) Clauses 5a and 5b are not required to be used except for debts founded on *open account*, when they are required, and the date required to be inserted in clause 5a in case of an account of several items is the "average due date." There is no general rule requiring a statement of account to be furnished, but it is generally advisable to attach an itemized statement to proof of debt if practicable, referring to it in clause 5 as, for instance, "goods sold per statement attached."

(G) In proving *on note or other instrument in writing*, the original note or other instrument must be attached, or if lost or

Proof Of Debt — Instructions.

destroyed that fact and the circumstances must be stated in clause 5. Originals will be returned after allowance or disallowance of claim, if copies be supplied. Hence, attach copies also.

(H) In proving debt founded on *judgment*, clause 5 should include a full description of the judgment, with the date and place of entry, or a transcript may be attached and there referred to, as for instance, "judgment of which transcript is attached." If the judgment was recovered after the filing of the petition in bankruptcy, the transcript of proof should show the damages and costs separately, and the proof the amount of costs "incurred in good faith" before such filing.

(I) To use clause 10, *letter of attorney*, insert name of attorney or firm of attorneys if not already done, also date, and strike out any provision not desired, to suit circumstances. A letter of attorney is not essential to the proof of the debt. One is printed on this blank for use before those courts and referees which require attorneys to show written authority, but it would seem that an attorney of the United States District Courts under a general retainer which may be unwritten, needs no letter of attorney to act for a creditor in a bankruptcy proceeding. See 1 Am. B. N. 205, and *Re Grasser*, 5 Am. B. Rep. 32.

(J) *In Signing*, the person executing should sign his individual name on the first signature line in every case. If he be the individual creditor and clause 10 is used write "L. S." or attach *seal* after his name. In case of a firm or corporation the firm or corporate name should be written on second signature line, and if clause 10 is used add "L. S." or attach a *seal* for the firm or imprint the *corporate seal* for the corporation and let the person signing again write his own name on the last line adding in case of a corporation "its treasurer" if he be such.

(K) After signing, the proof may be *sworn* to and letter of attorney *acknowledged* before a referee in bankruptcy, any officer authorized to administer oaths in United States Courts, any United States diplomatic or consular officer in a foreign country, or any officer authorized to administer oaths under the law of the state where made, and the latter need not use seal except in the states whose laws require it on other affidavits generally for use there. "County clerk's certificates" are not necessary. If clause 10 be omitted strike out "and acknowledged."

(L) *On the outside* make suitable changes when debt is secured, or general letter of attorney is not used. The *address* of the creditor should be given to insure the proper direction of notices of proceedings.

MECHANIC'S LIEN NOTICES.

NOTE.

In complying with subdivision 4 of section 9, which requires a statement of "the labor performed and to be performed, or the materials furnished or to be furnished and the agreed price or value thereof," a close adherence to the language of the statute is dangerous. Statements in the alternative form such as:

"The labor performed *or* to be performed; "

"The materials furnished *or* to be furnished; "

"The agreed price *or* value; " *or*

"The amount unpaid for such labor *and* materials furnished: "

or

"The time when such labor *and* materials were furnished; "

"The materials furnished *and* to be furnished; "

should be carefully avoided, as there is grave danger that the notice may leave uncertain and equivocal the information which the statute requires shall be stated specifically. It is safer to state separately where necessary the amount of labor performed and the amount to be performed; the material furnished and the material to be furnished; the agreed price of each or the value of each.

See *Bradley v. Patchetan*, 71 App. Div. 148; *New Jersey Steel Co. v. Robinson*, 85 App. Div. 512; *Armstrong v. Chisholm*, 100 App. Div. 440.

Note.

Subdivision 1 of section 9 of the Lien Law, as amended by chapter 96, Laws of 1905, now require the notice to state:

"The name and residence of the lienor; and if the lienor is a partnership or a corporation the business address of such firm or corporation, and if a foreign corporation its principal place of business in this State."

FILING OF NOTICE.

The notice of lien may be filed at any time during the progress of the work and the furnishing of the materials, or within ninety days after the completion of the contract, or the final performance

Notice — By Partnership — Materials.

of the work, or the final furnishing of the materials, dating from the last item of work performed or materials furnished. The notice of lien must be filed in the clerk's office of the county where the property is situated. If such property is situated in two or more counties, the notice of lien shall be filed in the office of the clerk of each of such counties.

FORM No. 359.**Notice of Mechanic's Lien — For Materials by Partnership Supplying Materials to Owner.**

To the Clerk of the County of (*New York*) and to all others whom it may concern:

PLEASE TAKE NOTICE, that (*Paul Pfotenhauer*,) residing at (*100 West 118th street, Manhattan, New York City*) and (*William H. Nesbit*,) residing at (*841 West End avenue, Manhattan, New York City*,) co-partners composing the firm of (*Pfotenhauer & Nesbit*,) with business address and principal place of business at (*1133 Broadway, Manhattan, New York City*,)

Have and claim a lien for the principal and interest of the value and agreed price of the materials hereinafter mentioned, upon the real property hereinafter described and upon the improvement, pursuant to the provisions of article 1 of chapter XLIX., of the General Laws of the State of New York, known as the Lien Law, and being chapter 418 of the Laws of 1897, and all the acts and laws amending and extending the same; or in force in said county in reference to mechanics' liens, and hereby state:

The names of the owners of the real property against whose interest therein a lien is claimed, and the interest of the owners as far as known to the lienor are (*Schumar & Kaufman*,) and (*John Doe, the name "John Doe" being fictitious, his true name being unknown to lienor*,) owners of the fee.

The name of the persons by whom the lienors were employed and to whom they furnished such materials and with whom the contract was made are (*Schumar & Kaufman*,)

The material furnished and the agreed price and value thereof are as follows: (*front brick*) of the price and value of (\$298.60) for which a lien is claimed.

The amount unpaid to the lienor for such materials is (\$298.60,) for which amount a lien is claimed.

Notice — By Partnership — Materials.

The time when the first and last items of materials were furnished is as follows:

First item of materials: (*April 11, 1906.*)

Last item of materials: (*April 11, 1906.*)

The property subject to the lien is situated in (*the City of New York, Borough of Manhattan, on the north side of 152nd street, about 150 feet west of Broadway, being about 100 feet wide, front and rear, by about 100 feet deep, on each side and its street number being unknown to lienors, being two five-story brick and stone tenement houses.*)

That all the materials for which this lien is claimed have been actually furnished.

That said materials were furnished for and used in the improvement of the real property hereinbefore described.

That ninety days have not elapsed dating from the last item of materials furnished, nor since the completion of the contract, nor since the final furnishing of the materials, for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

Dated, (*May 17, 1906.*)

(*PFOTENHAUER & NESBIT,*)

By (*Frank W. Avery,*) as Agent.

STATE OF NEW YORK,
 (*City and*) County of (*New York,*) } ss.:
 (*Borough of Manhattan,*) }

(*Frank W. Avery,*) being duly sworn, says that he is the agent of the lienor mentioned in the foregoing notice of lien; that he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*FRANK W. AVERY.*)

Sworn to before me, this
 (*17th*) day of (*May, 1906.*)

(*FREEMAN C. GRISWOLD,*)

Notary Public,

(*New York*) County.

FORM No. 360.

Notice of Mechanic's Lien — For Materials by Domestic Corporation for Material Supplied to Owner, a Domestic Corporation.

To the Clerk of the County of (*New York*,) and to all others whom it may concern:

PLEASE TAKE NOTICE, that (*Atlantic Cement Company*,) a domestic corporation residing at and with business address and principal place of business at (*5 East 42nd street, Manhattan, New York City*,)

Has and claims a lien for the principal and interest of the value and agreed price of the materials hereinafter mentioned, upon the real property hereinafter described, and upon the improvement, pursuant to the provisions of article 1 of chapter XLIX., of the General Laws of the State of New York, known as the Lien Law, and being chapter 418 of the Laws of 1897, and all the acts and laws amending and extending the same; or in force in said county in reference to mechanics' liens, and hereby states:

The names of the owners of the real property against whose interest therein a lien is claimed, and the interest of the owners as far as known to the lienor are (*The 140th Street Company, The Lawrence Building Company*) and John Doe, said name "John Doe" being fictitious, his true name being unknown to lienor, owners of the fee.

The name of the person by whom the lienor was employed and to whom it furnished such materials and with whom the contract was made is (*the 140th Street Company*,) acting for itself and the owners.

The material furnished and the agreed price and value thereof are as follows: (*brick, lime, cement and general building materials*) of the price and value of (\$2,000, *the said amount not having been included in the lien heretofore and on the 19th day of March, 1906, filed by said Atlantic Cement Company owing to erroneous statements, leaving a balance unpaid stated in said lien.*)

The amount unpaid to the lienor for such materials is (\$2,000,) for which amount the lien is claimed (*with interest from March 2, 1906.*)

The time when the first and last items of materials were furnished is as follows:

First item of materials: (*October 21, 1905.*)

Notice — By Domestic Corporation — Materials.

Last item of materials: (*March 2, 1906.*)

The property subject to the lien is situated in (*the City of New York, Borough of Manhattan, on the north side of 139th street, and on the south side of 140th street, about 75 feet west of Broadway, being about 125 feet wide, front and rear, by about 200 feet deep, on each side, its street numbers being unknown to lienor being 5 five-story brick and stone tenements.*)

That all the materials for which this lien is claimed have been actually furnished.

That said materials were furnished for and used in the improvement of the real property hereinbefore described.

That ninety days have not elapsed dating from the last item of materials furnished, nor since the completion of the contract, nor since the final furnishing of the materials, for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

Dated, (*April 25, 1906.*)

(*ATLANTIC CEMENT COMPANY,*)

By (*William J. Cox,*) as Agent.

STATE OF NEW YORK,
(*City and*) County of (*New York,*) } ss.:
(*Borough of Manhattan,*) }

(*William J. Cox,*) being duly sworn, says that he is the agent of the lienor mentioned in the foregoing notice of lien; that he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*WILLIAM J. COX,*)

Sworn to before me, this
(*25th*) day of (*April, 1906.*)

(*FREEMAN C. GRISWOLD,*)

Notary Public,
(*N. Y.*) Co.

Notice — By Individual — Materials.

FORM No. 361.

Notice of Mechanic's Lien — For Material by an Individual for Material Supplied to Contractor, an Individual.

To the Clerk of the County of (*New York*), and to all others whom it may concern:

PLEASE TAKE NOTICE, that (*Henry G. Silleck, Jr.*), residing at (*southeast corner of 93rd street and Fifth avenue, Manhattan, New York City*),

Has and claims a lien for the principal and interest of the value and agreed price of the materials hereinafter mentioned, upon the real property hereinafter described, and upon the improvement, pursuant to the provisions of article 1 of chapter XLIX., of the General Laws of the State of New York, known as the Lien Law, and being chapter 418 of the Laws of 1897 and all the acts and laws amending and extending the same; or in force in said county in reference to mechanics' liens, and hereby state:

The names of the owners of the real property against whose interest therein a lien is claimed, and the interest of the owners as far as known to the lienor are (*R. Emil Robitzek*) and John Doe, said name "John Doe" being fictitious, his true name being unknown to the lienor, owners of the fee.

The name of the person by whom the lienor was employed and to whom he furnished such materials and with whom the contract was made is (*William Guggolz*.)

The material furnished and the agreed price and value thereof are as follows: (*lumber and timber*) of the price and value of (\$107.28.)

The amount unpaid to the lienor for such materials is (\$107.28,) for which amount the lien is claimed.

The time when the first and last items of materials were furnished is as follows:

First item of materials: (*March 2, 1906.*)

Last item of materials: (*March 2, 1906.*)

The property subject to the lien is situated in (*the City of New York, Borough of Bronx, on the north side of Freeman street, about 132 feet west of Southern Boulevard, being about 125 feet wide, front and rear, by about 100 feet deep, on each side, and its street numbers believed to be 1133-1135-1137-1139-1141, and being 4 five-story brick and stone tenements.*)

Notice — By Individual — Materials.

That all the materials for which this lien is claimed have been actually furnished.

That said materials were furnished for and used in the improvement of the real property hereinbefore described.

That ninety days have not elapsed dating from the last item of materials furnished, nor since the completion of the contract, nor since the final furnishing of the materials, for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

Dated, (*April 20, 1906.*)

(*HENRY G. SILLECK, JR.,*)

By (*WILLIAM J. COX,*) as Agent.

STATE OF NEW YORK,

(*City and*) County of (*New York,*) } ss.:
(*Borough of Manhattan,*) }

(*William J. Cox,*) being duly sworn, says that he is the agent of the lienor mentioned in the foregoing notice of lien; that he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*WILLIAM J. COX.*)

Sworn to before me, this
(*20th*) day of (*April, 1906.*)

(*FREEMAN C. GRISWOLD,*)

Notary Public,

(*New York*) County.

FORM No. 362.**Notice of Mechanic's Lien — For Materials by Domestic Corporation
Against Owner and Partnership Contractors for Materials Sup-
plied to Contractors.**

To the Clerk of the County of (*New York*,) and to all others
whom it may concern :

PLEASE TAKE NOTICE, that (*The Empire Brick and Supply Company*,) a domestic corporation residing at and with business address and principal place of business at (*874 Broadway, Manhattan, New York City*,)

Has and claims a lien for the principal and interest of the value and agreed price of the materials hereinafter mentioned, upon the real property hereinafter described, and upon the improvement, pursuant to the provisions of article 1 of chapter XLIX., of the General Laws of the State of New York, known as the Lien Law, and being chapter 418 of the Laws of 1897, and all the acts and laws amending and extending the same; or in force in said county, in reference to mechanics' liens, and hereby states:

The names of the owners of the real property against whose interest therein a lien is claimed, and the interest of the owners as far as known to the lienor are (*Rosenthal & Levy*,) and John Doe, said name "John Doe" being fictitious, his true name being unknown to the lienor owners of the fee.

The name of the person by whom the lienor was employed and to whom it furnished such materials, and with whom the contract was made is (*Joseph Rosenthal*,) acting for himself and the owners.

The materials furnished and the agreed price and value thereof are as follows: (*brick, lime, cement and general masons' materials*,) of the price and value of (\$22,271.75) of which the sum of (\$21,142.05) has been paid on account, leaving a balance unpaid of (\$1,129.70.)

The amount unpaid to the lienor for said materials is (\$1,129.70,) for which amount a lien is claimed, with interest from (*January 18, 1906*.)

The time when the first and last items of materials were furnished is as follows:

First item of materials: (*June 30, 1905*.)

Last item of materials: (*January 8, 1906*.)

Notice — By Domestic Corporation — Materials.

The property subject to the lien is situated in (*the City of New York, Borough of Manhattan, on the south side of 134th street, about 100 feet west of Amsterdam avenue, being about 293 feet wide, front and rear, by about 100 feet deep, on each side, and its street numbers being unknown to lienor, being 7 five-story brick and stone tenements.*)

That all the materials for which this lien is claimed have been actually furnished.

That said materials were furnished for, and used in the improvement of the real property hereinbefore described.

That ninety days have not elapsed, dating from the last item of materials furnished, nor since the completion of the contract, nor since the final furnishing of the materials, for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

Dated, (*April 7, 1906.*)

(*EMPIRE BRICK & SUPPLY COMPANY,*)

By (*WILLIAM J. COX,*) as Agent.

STATE OF NEW YORK,

(*City and*) County of (*New York,*) } ss.:
(*Borough of Manhattan.*) }

(*William J. Cox,*) being duly sworn, says that he is the agent of the lienor mentioned in the foregoing notice of lien. That he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*WILLIAM J. COX.*)

Sworn to before me this (*7th*)
day of (*April, 1906.*)

(*FREEMAN C. GRISWOLD,*)

Notary Public,

(*New York*) County.

Notice — By Domestic Corporation — Labor And Materials.

FORM No. 363.**Notice of Mechanic's Lien — For Labor and Materials by Domestic Corporation Against Owner, Individual, for Materials and Labor Furnished to Owner.**

To the Clerk of the County of (*New York*,) and to all others whom it may concern:

PLEASE TAKE NOTICE, that (*Maresca Walsh Tile & Marble Works*,) a domestic corporation residing at and with business address and principal place of business at (*31 East One Hundred and Thirty-fifth Street, Manhattan, New York City*,)

Has and claims a lien for principal and interest of the value and agreed price of the labor and materials hereinafter mentioned, upon the real property hereinafter described, and upon the improvement, pursuant to the provisions of article 1, chapter XLIX., of the General Laws of the State of New York, known as the Lien Law, and being chapter 418 of the Laws of 1897, and of the acts and laws amending and extending the same, or in force in said county in reference to mechanics' liens, and hereby states:

The names of the owners of the real property against whose interest therein a lien is claimed, and the interest of the owners as far as known to the lienor, are (*Louis Lewenhof*,) and John Doe, said name "John Doe," being fictitious, his true name being unknown to the lienor, owners of the fee.

The name of the person by whom the lienor was employed and to whom it furnished such labor and materials, and with whom the contract was made, is (*Louis Lewenhof*.)

The labor performed and the materials furnished and the agreed price and value thereof are as follows:

(*Marble and tile and labor in placing and setting same*,) of the price and value of (\$875) and extra materials, consisting of (*two marble steps and labor in placing and setting same under stairs*,) of the price and value of (\$10,) in all (\$885,) of which the sum of (\$600) has been paid on account, leaving a balance unpaid of (\$285.)

The amount unpaid to the lienor for such labor and materials is (\$285) for which amount a lien is claimed.

The time when the first and last items of work were performed and materials were furnished is as follows: First item of work and extra work, (*December 22, 1905*.) Last item of work and extra work (*March 24, 1906*.) First item of materials and extra

Notice — By Domestic Corporation — Labor And Materials.

materials, (*December 22, 1905.*) Last item of materials and extra materials, (*March 24, 1906.*)

The property subject to the lien is situated in (*the City of New York, Borough of Manhattan, on the south side of One Hundred and Twenty-seventh Street, about 64 feet west of Lexington Avenue, being about 36 feet wide, front and rear, by about 100 feet deep on each side, and its street numbers being unknown to lienor, being one six-story brick and stone apartment.*)

That all the materials and labor for which this lien is claimed have been actually furnished and performed.

That said labor and materials were performed and furnished for and used in the improvement of the real property hereinbefore described.

That ninety days have not elapsed, dating from the last item of work performed, and dating from the last item of materials furnished, nor since the completion of the contract, nor since the final performance of the work, nor since the final furnishing of the materials for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

Dated, (*April 2, 1906.*)

(*MARESCA WALSH TILE AND MARBLE WORKS.*)

By (*WILLIAM J. COX,*) as Agent.

STATE OF NEW YORK,
(*City and*) County of (*New York,*) } ss.:
(*Borough of Manhattan,*) }

(*William J. Cox,*) being duly sworn, says that he is the agent of the lienor mentioned in the foregoing notice of lien. That he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*WILLIAM J. COX.*)

Sworn to before me this (*2nd*)
day of (*April, 1906.*)

(*FREEMAN C. GRISWOLD,*)

Notary Public,

(*New York*) County.

Notice — By Domestic Corporation — Labor And Materials.

FORM No. 364.**Notice of Mechanic's Lien — For Labor and Materials by Domestic Corporation Against Individual Owner and Copartnership Contractor for Labor and Materials Furnished to Contractor.**

To the Clerk of the County of (*New York*,) and to all others whom it may concern:

PLEASE TAKE NOTICE, that (*Maresca Walsh Tile & Marble Works*,) a domestic corporation residing at and with business address and with principal place of business at (*31 East 135th Street, Borough of Manhattan, New York City*.)

Has and claims a lien for principal and interest of the value and agreed price of the labor and materials hereinafter mentioned, upon the real property hereinafter described, and upon the improvement, pursuant to the provisions of article 1, chapter XLIX., of the General Laws of the State of New York, known as the Lien Law and being chapter 418 of the Laws of 1897, and all the acts and laws amending and extending the same, or in force in said county in reference to mechanics' liens, and hereby state:

The names of the owners of the real property against whose interest therein a lien is claimed, and the interest of the owners as far as known to the lienor, are (*Louis Weinstein*) and (*Harris Sacks and Philip Mandel, Sacks & Mandel*,) and John Doe, the name "John Doe" being fictitious, his true name being unknown to the lienor, owners of the fee.

The name of the persons by whom the lienor was employed and to whom it furnished such labor and materials and with whom the contract was made are (*Sacks & Mandel*,) acting for themselves and the owners.

The labor performed and the materials furnished and the agreed price and value thereof, are as follows: materials consisting of (*tile and the labor in placing and setting the same*) of the price and value of (\$637.50) of which the sum of (\$496.00,) has been paid on account, leaving a balance of (\$141.00) unpaid.

The amount unpaid to the lienor for such labor and materials is (\$141.00,) for which amount the lien is claimed.

The time when the first and last items of work were performed and materials were furnished is as follows:

First item of work (*Jan. 10/06*,) last item of work (*April 25/06*,) first item of materials (*Jan. 10/06*,) last item of materials (*April 12/06*.)

 Notice — By Domestic Corporation — Labor And Materials.

The property subject to the lien is situated in (*the City of New York, Borough of Bronx, on the west side of Prospect Avenue, about 500 feet north of 152nd Street, being about 63 feet wide, front and rear, by about 100 feet deep, on each side, and its street number being 152 Prospect Avenue, being two five-story brick tenements.*)

That all the materials and labor for which this lien is claimed have been actually furnished and performed.

That said labor and materials were performed and furnished for and used in the improvement of the real property hereinbefore described.

That ninety days have not elapsed dating from last item of work performed, and dating from last item of materials furnished, nor since the completion of the contract, nor since the final performance of the work, nor since the final furnishing of the materials for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

(*MARESCA WALSH TILE & MARBLE WORKS,*)

By (*William J. Cox,*) as Agent.

Dated (*May 3, 1906.*)

STATE OF NEW YORK,	} ss.:
(<i>City and</i>) County of (<i>New York,</i>)	
(<i>Borough of Manhattan,</i>)	

(*William J. Cox,*) being duly sworn, says that he is the agent of the lienor mentioned in the foregoing notice of lien; that he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

(*WILLIAM J. COX.*)

Sworn to before me, this
(*3rd*) day of (*May, 1906.*)

(*STEPHEN W. LIVINGSTON,*)

Notary Public,
(*Kings*) Co.

(*Cert. filed in New York County.*)

Notice—By Individual—Labor And Materials.

FORM No. 365.**Notice of Mechanic's Lien — For Labor and Materials by an Individual Against Owner, Individual, for Labor and Material Supplied to Owner.**

To the Clerk of the County of (*New York*) and to all others whom it may concern:

PLEASE TAKE NOTICE, that (*Adam Hoeffel*,) residing at (*138 West 119th Street, Manhattan, New York City*,)

Has and claims a lien for principal and interest of the value and agreed price of the labor and materials hereinafter mentioned, upon the real property hereinafter described, and upon the improvement, pursuant to the provisions of article 1, chapter XLIX., of the General Laws of the State of New York, known as the Lien Law, and being chapter 418 of the Laws of 1897, and all the acts and laws amending and extending the same; or in force in said county in reference to mechanics' liens, and hereby states:

The names of the owners of the real property against whose interest therein a lien is claimed, and the interest of the owners as far as known to the lienor, are (*Peter Bauner*) and John Doe, said name "John Doe" being fictitious, his true name being unknown to lienor, owners of the fee.

The name of the person by whom the lienor was employed and to whom he furnished such labor and materials and with whom the contract was made is (*Peter Bauner*.)

The labor performed and the materials furnished and the agreed price and value thereof, are as follows: (*fire escapes and shutters and labor in erecting, placing and setting same*,) of the price and value of (\$532.00,) of which the amount of (\$400.00) has been paid on account, leaving a balance unpaid of (\$132.00.)

The amount unpaid to the lienor for such labor and materials is (\$132.00,) for which amount the lien is claimed. The time when the first and last items of materials were furnished and first and last items of work done are as follows:

First item of work (*June 12, 1905*,) last item of work (*Feb. 12/06*,) first item of materials (*June 12/05*,) last item of materials (*Feb. 12, 1906*.)

The property subject to the lien is situated in (*the City of New York, Borough of Manhattan, on the east side of Broadway, between Bleecker and Bond Streets, about 30 feet 5 inches wide*,

Notice — By Individual — Labor And Materials.

front and rear, by about 100 feet deep, on each side, and its street number being 648 Broadway.)

That all the materials and labor for which this lien is claimed have been actually furnished and performed.

That said labor and materials were performed and furnished for and used in the improvement of the real property hereinbefore described.

That ninety days have not elapsed dating from last item of work performed, and dating from last item of materials furnished, nor since the completion of the contract, nor since the final performance of the work, nor since the final furnishing of the materials for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

(ADAM HOFFEL,)

By (Stephen W. Livingston,) as Agent.

Dated, (April 27, 1906.)

STATE OF NEW YORK,
(City and) County of (New York,) } ss.:
(Borough of Manhattan.)

(Stephen W. Livingston,) being duly sworn says, that he is the agent of the lienor mentioned in the foregoing notice of lien; that he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(STEPHEN W. LIVINGSTON.)

Sworn to before me, this
(27th) day of (April, 1906.)

(FREEMAN C. GRISWOLD,)

Notary Public,

(New York) County.

Notice — By Foreign Corporation — Materials.

FORM No. 366.**Notice of Mechanic's Lien — For Materials by a Foreign Corporation Against Contractor, Domestic Corporation, for Materials Supplied to Contractor.**

To the Clerk of the County of (*New York*), and to all others whom it may concern:

PLEASE TAKE NOTICE, that (*Eastern Hydraulic Press Brick Company*), a foreign corporation, residing at and whose business address and principal place of business are (*Union Trust Building, St. Louis, Mo.*;) whose principal place of business in the State of New York is (*289 4th Avenue, Manhattan, New York City*),

Has and claims a lien for the principal and interest of the value and agreed price of the materials hereinafter mentioned, upon the real property hereinafter described, and upon the improvement, pursuant to the provisions of article 1 of chapter XLIX., of the General Laws of the State of New York, known as the Lien Law, and being chapter 418 of the Laws of 1897, and all the acts and laws amending and extending the same; or in force in said county, in reference to mechanics' liens, and hereby states:

The names of the owners of the real property against whose interest therein a lien is claimed, and the interest of the owners as far as known to the lienor are (*Eden Construction Company*), and John Doe, said name "John Doe" being fictitious, his true name being unknown to lienor, owners of the fee.

The name of the person by whom the lienor was employed and to whom he furnished such materials, and with whom the contract was made is (*Eden Construction Company*.)

The materials furnished and the agreed price and value thereof are as follows: materials consisting of (*front brick*) of the price and value of (\$1,909.50,) of which (\$1,681.50) has been paid on account, and leaving a balance of (\$228.00) unpaid.

The amount unpaid to the lienor for such materials is (\$228.00,) for which amount a lien is claimed.

The time when the first and last items of materials were furnished is as follows:

First item of materials: (*December 7, 1905.*)

Last item of materials: (*February 5, 1906.*)

The property subject to the lien is situated in (*the City of New York, Borough of Manhattan, on the southwest corner of Man-*

Notice — By Foreign Corporation — Materials.

hattan Avenue and 110th Street, being about 100 feet and . . . inches wide, front and rear, by about 100 feet and . . . inches deep, on each side, its street numbers being unknown to lienor and being one six-story brick and stone tenement.)

That all the materials for which this lien is claimed have been actually furnished.

That said materials were furnished for and used in the improvement of the real property hereinbefore described.

That ninety days have not elapsed dating from the last item of materials furnished, nor since the completion of the contract, nor since the final furnishing of the materials, for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

Dated, (*May 3, 1906.*)

(*EASTERN HYDRAULIC PRESS COMPANY,*)

By (*WILLIAM J. COX,*) as Agent.

STATE OF NEW YORK,
 (*City and*) County of (*New York,*) } ss.:
 (*Borough of Manhattan.*) }

(*William J. Cox,*) being duly sworn says, that he is the agent of the lienor mentioned in the foregoing notice of lien; that he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*WILLIAM J. COX.*)

Sworn to before me, this
 (*3rd*) day of (*May, 1906.*)

(*WM. M. G. WATSON,*)

(*Com'r of Deeds for the City of New York.*)

FORM No. 367.

**Notice of Mechanic's Lien — For Materials by Agent of Corporation,
Supplying Material to Subcontractor, Against Corporation.**

To the Clerk of the County of (*New York*) and to all others
whom it may concern:

PLEASE TAKE NOTICE, that (*E. F. Keating Company*), a domestic corporation residing at and whose business address and principal place of business is (*446 Water Street, Borough of Manhattan, New York City*), has and claims a lien for the principal and interest of the value and agreed price of the materials hereinafter mentioned, upon the real property hereinafter described, and upon the improvement, pursuant to the provisions of article 1 of chapter XLIX., of the General Laws of the State of New York, known as the Lien Law, and being chapter 418 of the Laws of 1897, and all the acts and laws amending and extending the same; or in force in said county in reference to mechanics' liens, and hereby states:

The name of the owner of the real property against whose interest therein a lien is claimed, and the interest of the owners as far as known to the lienor is (*Title Guarantee & Trust Company*) and (*John Doe, said name, John Doe, being fictitious, his true name being unknown to lienor*), owners of the fee.

The name of the persons by whom the lienor was employed, and to whom it furnished such materials and with whom the contract was made are (*Edward J. McCabe & Co.*), sub-contractors under (*Thompson Starrett Company*) contractor.

The material furnished and the agreed price and value thereof are as follows: Material consisting of (*wrought iron pipe and fillings*) of the price and value of (\$4,158.15,) of which (\$3,000) has been paid on account (*and \$847.19 credited on account for materials returned*), leaving balance of (\$311.45) unpaid.

The amount unpaid to the lienor for such materials is (\$311.45,) for which amount a lien is claimed.

The time when the first and last items of materials were furnished is as follows:

First item of materials: (*November 15th, 1905.*)

Last item of materials: (*January 21st, 1906.*)

The property subject to the lien is situated in the (*City of New York, Borough of Manhattan on the east side of Broadway, between Maiden Lane and John Street, being about 75 feet and six*

Notice — By Agent Of Corporation — Materials.

inches wide, front and rear, by about 118 feet and 11 inches deep, on each side and its street number being 176 and 178 Broadway, and being one 10-story brick and stone office building.)

That all materials for which this lien is claimed have been actually furnished.

That said materials were furnished for and used in the improvement of the real property hereinbefore described.

That ninety days have not elapsed dating from the last item of materials furnished, nor since the completion of the contract, nor since the final furnishing of the materials, for which this lien is claimed.

That the statements contained in the foregoing notice are alleged on information and belief.

(*E. F. KEATING CO.,*)

By (*WM. SMITH,*) Agent.

Dated, (*April 18, 1906.*)

STATE OF NEW YORK,
 (*City and*) County of (*New York,*) } ss.:
 (*Borough of Manhattan.*)

(*William Smith,*) being duly sworn, says that he is agent of the lienor mentioned in the foregoing notice of lien; that he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(*WM. SMITH.*)

Sworn to before me, this
 (*18th*) day of (*April, 1906.*)

(*FREEMAN E. GRISWOLD,*)

Notary Public,

(*New York*) County.

Notice — By Individual — Labor.

FORM No. 368.

Notice of Mechanic's Lien — For Labor — Individual Against Corporation.

To (*Peter J. Dooling*,) Esquire,
Clerk of the County of (*New York*):

TAKE NOTICE that I, (*John J. Dunn*,) have and claim a lien for the principal and interest of the value and the agreed price of the labor and materials hereinafter mentioned upon the real property improved and upon such improvement hereinafter described pursuant to the provisions (article 1) of the Lien Law of the State of New York, and I do hereby state that

1. The name and residence of the lienor is (*John J. Dunn, 13 East 65th Street, New York City.*)

2. The name of the owner of the real property against whose interest therein a lien is claimed is (*The Tenth Street Co.*) and ("*John Doe*," said name "*John Doe*" being fictitious, his true name being unknown to lienor,) and the interest of said owners, as far as known to the lienor is as owner of the fee.

3. The name of the person by whom the lienor was employed and the person with whom the contract was made was (*The One Hundred and Tenth Street Company.*)

4. The labor performed and the agreed price and value thereof are as follows, respectively: (*Excavating*) and the agreed price was (\$309.00.)

5. The amount unpaid to the lienor therefor is (\$309.00.)

6. The time when the first items of work were performed is (*Jan'y 5, 1906.*)

The time when the last item of work was performed is (*Jan'y 17, 1906.*)

The property subject to the lien is situated in the (*Borough of Manhattan*,) and a description sufficient for identification and its location is as follows:

It is situated in (*Manhattan Borough on the north side of Cathedral Parkway, 100 feet west of Broadway, being 75 feet wide, front and rear by 90 feet deep on each side and whose number is unknown to lienor.*)

That all the labor for which this lien is claimed has been actually performed.

 Notice — Against Public Improvement.

That said labor was performed for the improvement of the real property hereinbefore described.

That ninety days have not elapsed, dating from the last item, of work performed, nor since the completion of the contract, nor since the final performance of the work, for which this lien is claimed.

(JOHN J. DUNN.)

Dated, (*April 3, 1906.*)

STATE OF NEW YORK, }
 County of (*New York,*) } ss.:

(*John J. Dorgan,*) being duly sworn, says that he is (*the agent of*) the lienor mentioned in the foregoing notice of lien; that he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

(JOHN J. DUNN.)

Sworn to before me, this
 (*3rd*) day of (*April, 1906.*)

(JOHN J. GLEN,)

Notary Public,

(*New York*) County.

FORM No. 369.

Notice of Mechanic's Lien — On Account of Public Improvement.

To the (*Comptroller of the City of New York and the Department of Public Charities:*)

PLEASE TAKE NOTICE.

That (*Adam Happel,*) residing at (*138 West 119th street, in the Borough of Manhattan, City of New York,*) has and claims a lien for the principal and interest of the value and price of the labor and materials hereinafter mentioned upon the moneys in the control of the (*City of New York,*) and upon the moneys of such municipal corporation applicable to the construction of the public improvement hereinafter mentioned to the extent of the amount due or to become due under and on the contract with said municipi-

Notice — Against Public Improvement.

pal corporation hereinafter described, which lien is based upon the following facts:

1. The names of the contractors or subcontractors for whom the labor was performed and materials furnished are (*Herman Lippel & Brothers.*)

2. The amount due the lienor is (\$210.60,) and the date when due is (*January 6, 1905.*)

3. A description of the public improvement upon which the labor was performed and materials furnished is as follows:

(*The new reception building at the city hospital at Blackwell's Island, New York City.*)

4. The kind of labor performed and materials furnished is as follows: (*Materials consisting of columns, shoes, angles and wood screws and labor in placing and setting the same of the price and value of \$210.60.*)

5. A general description of the contract pursuant to which such public improvement was constructed is as follows:

(*A contract between Herman F. Lippel Brothers and the City of New York for improvement, described in paragraph 3 above, contract No. 10,106, dated April 16, 1904, for \$20,900.*)

6. This notice is filed pursuant to "The Lien Law" of the State of New York and all acts of the Legislature of the State of New York amending or extending the same or providing for filing mechanics' liens on account of public improvements. The labor and materials aforesaid were actually used in the construction of the said public improvement and in the execution and completion of said contract with said municipal corporation.

7. The statements in paragraph 1 to 6 in the foregoing notice are alleged upon information and belief.

Dated, (*New York, March 31, 1905.*)

(*ADAM HAPPEL.*)

(Verification.)

Notice — Against Public Improvement.

FORM No. 370.

Notice of Lien on Account of Public Improvement.

To the Comptroller of the City of New York and (*the Department of the Armory Board.*)

PLEASE TAKE NOTICE, that (*Columbia Company,*) a (*foreign*) corporation organized under the laws of the State of (*New Jersey,*) residing at and with business address and principal place of business at (*Newark, New Jersey,*) and with business address and principal place of business in this State at (*No. 287 Broadway, Manhattan, New York City,*) has and claims a lien for the principal and interest of the value and price of the labor and materials hereinafter mentioned upon the moneys in the control of the (*City of New York,*) and upon the moneys of such municipal corporation applicable to the construction of the public improvement hereinafter mentioned, to the extent of the amount due or to become due under and on the contract with said municipal corporation hereinafter described, which lien is based upon the following facts:

1. The names of the contractors or sub-contractors for whom the labor was performed and material furnished are (*Root & Mann and John Morse, contractors in the City of New York.*)

2. The amount due the lienor is (\$7,000.00,) and the date when due is (*April 15, 1906.*)

3. A description of the public improvement upon which the labor was performed and materials expended are as follows: (*erection and completion of a new armory building for the 62nd Regiment, N. G. S. N. Y., on the westerly side of Lexington Avenue, extending from 27th to 28th Streets, Manhattan, New York City.*)

4. The kind of labor performed and materials furnished is as follows: (*Architectural iron work and labor in erecting and setting same of the price and value of \$18,000,*) of which the sum of (\$11,000) has been paid on account, leaving a balance unpaid of (\$7,000.)

5. A general description of the contract pursuant to which such public improvement was constructed is as follows: (*Contract between John Morse and the City of New York for the public improvement described in paragraph 3, supra, for the sum of \$300,000. Contract No. 10,600,*) dated (*November 17, 1904,*)

 Notice — Against Public Improvement.

filed (*November 30, 1904,*) in the office of the (*Comptroller*) of the (*City of New York.*)

6. This notice is filed pursuant to "The Lien Law" of the State of New York, and all acts of the Legislature of the State of New York amending or extending the same or providing for filing mechanic's liens on account of public improvements. The labor and materials aforesaid were actually used in the construction of said public improvement and in the execution and completion of said contract with said municipal corporation.

7. The statements and matters in paragraphs numbered 1 to 6 in the foregoing notice are alleged on information and belief.

Dated, (*October 3, 1906.*)

(*COLUMBIA COMPANY,*)

By (*OLIVER ENGEL,*)

(*Secretary and Agent.*)

STATE OF NEW YORK,

(*City and*) County of (*New York,*) } ss.:

(*Oliver Engel,*) being duly sworn, says:

That he is (*the secretary and agent of*) the lienor mentioned in the foregoing notice of lien. That he has read the said notice and knows the contents thereof, and that the statements therein contained are true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. That the reason this verification is made by deponent and not by lienor is that lienor is a corporation and deponent is an officer thereof; to wit, the secretary.

(*OLIVER ENGEL.*)

Sworn to before me, this
(*3d*) day of (*October, 1906.*)

(*FRANK BOND,*)

Notary Public,

(*New York*) County.

Affidavit To Continue.

FORM No. 371.

Affidavit for Continuation of Mechanic's Lien.

SUPREME COURT, (*New York*) County.

In the Matter of the
Mechanic's Lien Claimed by
(*THEODORE JOHNSON*)

against

(*CHARLES WOODWARD*) as owner.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*THEODORE JOHNSON*), being duly sworn, says: Prior to (*December 1, 1903*), I performed the labor and furnished the materials set forth in the notice of lien hereinafter mentioned in and about the improvement of certain real property situate in (*the City of New York*), more particularly described in the notice of lien hereto attached.

On the (*first*) day of (*December, 1903*), I filed in the office of the Clerk of the County of (*New York*), pursuant to chapter 418 of the Laws of 1897, and the acts amendatory thereof, a notice claiming a lien against the said real property on account of said labor and materials, as appears by the copy of said notice of lien hereto attached and made a part hereof, which notice was duly docketed on the (*first*) day of (*December, 1903*).

Said notice of lien was filed within ninety days after the completion of said labor and the furnishing of said materials.

The name of the owner of said real property as stated in the annexed notice is (*Charles Woodward*), and the name of the person by whom I was employed and to whom I furnished materials as stated in said notice is (*Charles Woodward*).

My lien will expire on the (*first*) day of (*December, 1904*), and no action has been commenced or other proceedings taken to enforce this or any other mechanic's lien against said real property, and said lien has not been bonded, canceled or discharged, and the whole amount claimed thereunder is now due and payable. No steps have been taken to enforce said lien for the reason that an agreement has been entered into between (*Charles Woodward*),

Order Continuing.

the owner of said premises, and myself, providing for the payment of the amount claimed and said *Woodward* has requested that such action be deferred.

Deponent, therefore, asks that an order be entered continuing said lien for a period of one year.

No previous application has been made to any court or judge.

(*THEODORE JOHNSON.*)

Sworn to before me this (15th) }
day of (November, 1904.) }

(*ARNOLD GREEN,*)

Notary Public,

(N. Y.) County.

FORM No. 372.

Order Continuing Mechanic's Lien.

At a Special Term, (*Part II.*) of the Supreme Court of the State of New York, held in and for the County of (*New York,*) at the County Court House, in (*the Borough of Manhattan, City of New York,*) on the (20th) day of (*November,* 1904.)

PRESENT:

Hon. (*DAVID LEVENTRITT,*)

Justice.

In the Matter of the
Mechanic's Lien Claimed by
(*THEODORE JOHNSON*)

against

(*CHARLES WOODWARD,*) as owner.

On reading and filing the affidavit of (*Theodore Johnson,*) verified the (15th) day of (*November,* 1904,) and the notice of mechanic's lien thereto attached, and sufficient reason therefor to me appearing,

Order Continuing.

NOW, on motion of (*James J. Maxwell*,) attorney for said (*Theodore Johnson*,) it is

ORDERED, that the lien claimed by the said (*Johnson*) by his notice of lien filed (*December 1, 1903*,) at (*eleven*) o'clock, (*thirty*) minutes A. M., upon the following real property and the improvements thereon, to-wit: (*The twelve and one-half story hotel building, known as Hotel Woodson, situate at the corner formed by the intersection of the easterly side of Broadway, in the Borough of Manhattan, City of New York, with the southerly side of 53rd street*,) of which hotel building (*Charles Woodward*) is the owner, for the improvement to-wit: (*The furnishing and setting of window glass in said hotel building*,) be and the same hereby is continued for a period of one year pursuant to the provision of section 16 of chapter 418 of the Laws of 1897, known as the Lien Law, and the Clerk of the (*County of New York*) is hereby directed to make a new docket of the lien hereby continued as of the date of this order in the lien docket kept in his office for that purpose pursuant to law, and to note thereon that said lien is so continued by order of this court.

Enter,
(*D. L.*)

J. S. C.

Order Continuing.

FORM No. 373.

Order Continuing Mechanic's Lien.

At a Special Term of the Supreme Court, (*Part II.*)
thereof, held at the County Court House, in the
County of (*New York*), on the (*18th*) day of
(*January*, 1907.)

PRESENT:

Hon. (*EDWARD B. AMEND*),
Justice.

In the Matter of the
(Municipal Lien of (\$4,708.40, filed by
NATIONAL FIREPROOFING
COMPANY

against

FANNING and REILLY and the
contract between Fanning and Reilly
and the CITY OF NEW YORK
for the erection of New Public
School, No. 42 on Southwest Corner
of Wendover Avenue and Washing-
ton Avenue, in the Borough of
Bronx, City of New York.)

On reading and filing the affidavit of (*Henry M. Keaseby*),
verified the (*16th*) day of (*January*, 1907,) hereto annexed, and
on motion of (*Phillips & Avery*), attorneys for the (*National*
Fireproofing Company), the above-named lienor, it is

ORDERED that the lien for a public improvement for the sum
of (\$4,708.40,) filed by (*the National Fireproofing Company*)
against (*Fanning & Reilly*), contractors, and the contract between
said (*Fanning & Reilly*) and the (*City of New York*) for (*the*
erection of new public School No. 42 on the southwest corner of
Wendover and Washington Avenues in the Borough of Bronx, City
of New York), filed on the (*23d*) day of (*April*, 1906,) in the
office of the (*Comptroller of the City of New York*), and in the
office of the (*Department of Education of the City of New York*),

Order Continuing.

and thereafter continued by order of this court for six months from (23d) day of (*July*, 1906,) be, and the same hereby is continued for six months from the date of the entry of this order; and it is further

ORDERED that the (*Comptroller of the City of New York*) make a new docket of the lien continued hereby.

Enter,

(*E. B. A.*)

J. S. C.

PART VI.

COMMON FORMS OF INSTRUMENTS.

ACKNOWLEDGMENTS.

NOTE.

In most of the States the seal of the official taking the acknowledgment is not required to be affixed to the instrument. However, if a seal is used, a wafer should be affixed to the instrument before the impression is made. When acknowledgments are taken outside of New York for use in this State, a prothonotary certificate should be obtained.

FORM No. 374.

By Individual.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*second*) day of (*January*, 1903), before me personally appeared (*John Jones*), to me known and known to me to be the individual described in, and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

(*JOHN DOE*),

Notary Public,

(*New York*) County, No. (2).

FORM No. 375.

By Individual Not Known to Officer.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*second*) day of (*January*, 1903), before me personally came the above-named (*John Jones*), proven to me satis-

By Several Individuals.

factorily to be the individual described in, and who executed the foregoing instrument, by oath of (*Richard Roe*), to me personally known, who being by me duly sworn did depose and say, that he resided in the City (*and County of New York*); that he was acquainted with the said (*John Jones*), and that he knew him to be the same person described in, and who executed the foregoing instrument, and thereupon the said (*John Jones*) duly acknowledged before me that he executed the same.

(*JOHN DOE*),

Notary Public,

(*New York*) County, No. (2).

FORM No. 376.

By Two Individuals.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*second*) day of (*January*, 1903), before me personally appeared (*John Jones*) and (*Richard Roe*), severally known to me and to me known to be the several individuals described in and who executed the foregoing instrument, and they duly severally acknowledged to me that they severally executed the same.

(*JOHN DOE*),

Notary Public,

(*New York*) County, No. (2).

FORM No. 377.

By One of Several Individuals.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*second*) day of (*January*, 1903), before me personally appeared (*John Jones*), to me known and known to me to be one

By Attorney In Fact.

of the individuals described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

(*JOHN DOE*),
Notary Public,
(*New York*) County, No. (2).

FORM No. 378.

By Two Individuals, One Known and One Not Known to the Officer.

STATE OF NEW YORK, }
County of (*New York*), }^{ss.}:

On this (*second*) day of (*January*, 1903) before me personally came (*John Jones*), to me known to be one of the individuals described in and who executed the foregoing instrument, and also personally came (*Richard Roe*), satisfactorily proven to me to be the other individual described in and who executed the same, by oath of (*William Rich*), to me personally known, who being by me duly sworn said that he resided in the City (*and County of New York*), and that he knew the said (*Richard Roe*) to be one of the individuals described in and who executed the said instrument. Thereupon the said (*John Jones*) and (*Richard Roe*) severally acknowledged before me that they executed the same.

(*JOHN DOE*),
Notary Public,
(*New York*) County, No. (2).

FORM No. 379.

By Attorney in Fact.

STATE OF NEW YORK, }
County of (*New York*), }^{ss.}:

On the (*second*) day of (*January*, 1903), before me personally came (*John Jones*), the attorney of (*Richard Roe*), known to me to be the individual described in and who as such attorney,

 By Subscribing Witness.

executed the foregoing instrument, and acknowledged that he executed the same as the act and deed of (*Richard Roe*), therein described, and for the purposes therein mentioned, by virtue of a power of attorney duly executed by the said (*Richard Roe*), bearing date the (2nd) day of (*January*, 1903).

(*JOHN DOE*),

Notary Public,
(*New York*) County, No. (2).

FORM No. 380.

By Subscribing Witness.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On the (*second*) day of (*January*, 1903), before me personally came (*John Jones*), subscribing witness to the foregoing instrument, with whom I am personally acquainted, who being by me duly sworn, said that he resided in the City (*and County of New York*); that he was acquainted with (*Richard Roe*), and knew him to be the person described in and who executed the said instrument; and that he saw him execute and deliver the same; and that he acknowledged to him, the said (*John Jones*), that he executed and delivered the same; and that he, the said (*John Jones*), thereupon subscribed his name as a witness thereto.

(*JOHN DOE*),

Notary Public,
(*New York*) County, No. (2).

FORM No. 381.

By Subscribing Witness Unknown to Officer.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*second*) day of (*January*, 1903), before me personally came (*John Jones* and *Richard Roe*), and the said (*John Jones*),

By Corporation.

to me personally known, being by me duly sworn, said that he resided in the City (*and County of New York*); that he was acquainted with the said (*Richard Roe*) personally and knew him to be the same person who was the subscribing witness to the within instrument, which is to me satisfactory evidence thereof; and the said (*John Jones*), being duly sworn, said that he resided in the City (*and County of New York*); that he was acquainted with (*William Rich*) and knew him to be the person described in and who executed the said instrument; that he saw him execute the same, and that he acknowledged to him, the said (*John Jones*), that he executed and delivered the same, and he, the said (*John Jones*), thereupon subscribed his name as a witness thereto.

(*JOHN DOE*),

Notary Public,

(*New York*) County, No. (2).

FORM No. 382.

By a Corporation.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On the (*second*) day of (*January*.) in the year (1903), before me personally came (*John Jones*), to me known, who, being by me duly sworn, did depose and say, that he resided in the City (*and County of New York*); that he is the (*president*) of the (*John Jones Manufacturing Company*), the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

(*JOHN DOE*),

Notary Public,

(*New York*) County, No. (2).

By Corporation.

FORM No. 383.

By a Corporation (Another Form).

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*2nd*) day of (*July*), in the year One thousand nine hundred and (*seven*), before me personally appeared (*John Brown*), (*second*) Vice-president of the (*Brown Hotel*) Company the corporation described in and which executed the foregoing instrument, and (*William Reid*), the Secretary thereof, to me known and known to me to be the persons who executed the foregoing instrument on behalf of the (*Brown Hotel*) Company, and they being by me severally duly sworn, did depose and say, that he the said (*John Brown*) resides at (*Borough of Manhattan, New York City*), and is vice-president of the (*Brown Hotel*) Company, and that he the said (*William Reid*) resides at (*Orange, N. J.*), and is secretary of the said Company; and that they each of them knew the corporate seal of said Company and that the seal affixed to the foregoing instrument purporting to be the seal of the (*Brown Hotel*) Company is such seal and it was so affixed by order of the Board of Directors of the said Company, and that they severally signed their names thereto as vice-president and secretary respectively by like order and the said (*John Brown*) and (*William Reid*) also severally acknowledged to me that they executed the said instrument freely and voluntarily and as the act and deed of the said (*Brown Hotel*) Company for the uses and purposes therein expressed.

IN WITNESS WHEREOF I have hereunto set my hand and seal at the (*Borough of Manhattan, City, County and*) State of New York on the (*2nd*) day of (*July*, 1907.)

(OWEN WOOSTER,)

Notary Public,

(*New York*) County.

By Husband And Wife—Firm By One Partner.

FORM No. 384.**By Husband and Wife Known to the Officer.**

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

On this (*11th*) day of (*July*, 1907,) before me personally and severally came the within named (*George Boyd*) and (*Jane Boyd*,) his wife, severally known to me and to me known to be the persons described in, and who severally executed the foregoing instrument, and severally acknowledged that they severally executed the same for the uses and purposes therein mentioned.

(*FRANK JOHNSON*,)
 Notary Public,
 (*N. Y.*) County. (*No. 276.*)

FORM No. 385.**By Firm by One Partner.**

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

On this (*11th*) day of (*July*, 1907,) personally appeared before me (*Harry Smith*,) personally known to me to be a member of the firm of (*Smith, Parson & Company*,) to me known to be the person described in and who executed the foregoing instrument in the firm name of (*Smith, Parson & Company*,) and he acknowledged that he executed the same as the act and deed of said firm of (*Smith, Parson & Company*) for the uses and purposes therein mentioned.

(*FRANK JOHNSON*,)
 Notary Public,
 (*N. Y.*) County. (*No. 276.*)

By Wife In Separate Certificate — By Trustee.

FORM No. 386.**By Wife in Separate Certificate.**

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

I hereby certify that on this (11th) day of (*July*, 1907,) before me came (*Jane Falls*,) wife of (*Charles Falls*,) to me known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same.

(*FRANK JOHNSON*,)
Notary Public,
(*N. Y.*) Co. (*No. 276.*)

FORM No. 387.**By a Trustee.**

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

I hereby certify that on this (11th day of *July*, 1907,) before me came (*Edward Cole*,) to me known to be the trustee of the trusts created by the last will and testament of (*James Daly, deceased*,) of (*the Town of Knox, Suffolk County, New York*,) and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as such trustee.

(*FRANK JOHNSON*,)
Notary Public,
(*New York*) County. (*No. 276.*)

By Executor — Administrator.

FORM No. 388.**By an Executor.**

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

I hereby certify that on this (*11th day of July, 1907*), before me came (*Edward Cole*), to me known to be the executor of the last will and testament of (*James Daly*), late of the (*City and County of New York*) and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as such executor.

(*FRANK JOHNSON*),
 Notary Public,
 (*New York*) County. (*No. 276.*)

FORM No. 389.**By an Administrator.**

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

I hereby certify that on this (*11th day of July, 1907*), before me came (*Edward Cole*), to me known to be the administrator of the goods, chattels, and credits of (*James Daly*), late of (*the City of Albany*), deceased, and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as such administrator.

(*FRANK JOHNSON*),
 Notary Public,
 (*New York*) County. (*No. 276.*)

FORM No. 390.**Acknowledgment for Many States.**

STATE OF (*NEW YORK*), }
 City and County of (*New York*), } ss.:

Be it remembered, and I do certify, that on this (*twelfth*) day of (*July*), in the year (*1904*), in the said city and county afore-

For Many States.

said, before me, the undersigned (*John Doe*), a Notary Public, in and for the County of (*New York*), in the State of (*New York*), and a Commissioner of Deeds in and for the State of New York, duly appointed and commissioned as such by the respective governors of, and for the States of (*New Jersey, Ohio, Indiana, and Illinois*), and the commonwealth of (*Pennsylvania*), and being now duly qualified to act as such for each of such States and for said commonwealth, personally appeared (*Richard Roe*) and (*John Smith*), whose names are signed to the foregoing and hereto annexed deed, bearing date the (12th) day of (*July, 1904*), as president and secretary, respectively, of (*Williams Company*), with whom I am personally acquainted, and who are personally known to me to be, and who I am satisfied are, the president and secretary respectively, and the same persons whose names are subscribed to the foregoing instrument as such president and secretary, respectively, of (*Williams Company*), the within-named grantor, and the corporation described in and which executed the said deed, at my office and in the said City and County of New York, for themselves and on behalf of said (*Williams Company*); and being by me informed of the contents of said deed they on this day severally and respectively acknowledged the due execution of the foregoing deed on the day the same bears date; and further acknowledged that they voluntarily executed, signed, sealed and delivered the said deed as their free and voluntary act and deed, individually, and as such president and secretary, respectively, and as the free and voluntary act and deed of the said company, for the uses and purposes therein expressed and set forth, and desired the same to be recorded as such.

And the said (*Richard Roe*) and (*John Smith*), being by me first duly sworn, according to law, did each for himself and neither for the other, on his oath, depose and say: That they reside, the said (*Richard Roe*) in the City of (*New York*), and the said (*John Smith*) in the City of (*New York*), both in the State of (*New York*); that the said (*Richard Roe*) is the president, and the said (*John Smith*) is the secretary of the said company; that their names respectively signed in attestation of the execution of the foregoing deed, are in the said deponents' own proper handwriting, respectively; that they knew the corporate seal of the said company, the grantee in the foregoing instrument to be the common or corporate seal of the said company, and was thereto affixed by authority of the board of directors and by order of said company,

Form Of.

as the act and deed thereof; and that they signed their names thereto each in the presence of the other, by like authority, as president and secretary respectively of said company. And the said (*John Smith*) did further depose and say that he was personally present and saw the said (*Richard Roe*), as such president, sign the said deed and affix the common or corporate seal of said company to the said deed, and heard him declare that he signed, sealed and delivered the same as the voluntary act and deed of the said company, by order of the said board of directors, and that thereupon he, the said (*John Smith*), signed his name thereto at the same time as a subscribing witness.

In witness whereof, I have hereunto set my hand and seals of office, as commissioner of deeds for the States of (*New Jersey, Ohio, Indiana, Illinois*), and the commonwealth of (*Pennsylvania*), and as Notary Public for the County of (*New York*), in the State of (*New York*), at my office, the day and year first above written.

	(<i>JOHN DOE</i>),
	Notary Public,
[L. s.]	County of (<i>New York</i>), No. (22).
	(<i>JOHN DOE</i>),
[L. s.]	Commissioner for the State of (<i>New Jersey</i>).
	(<i>JOHN DOE</i>),
[L. s.]	Commissioner for the State of (<i>Ohio</i>).
	(<i>JOHN DOE</i>),
[L. s.]	Commissioner for the State of (<i>Indiana</i>).
	(<i>JOHN DOE</i>),
[L. s.]	Commissioner for the State of (<i>Illinois</i>).
	(<i>JOHN DOE</i>),
[L. s.]	Commissioner for the Commonwealth of
	(<i>Pennsylvania</i>).

FORM No. 391.

Affidavit of Title.

STATE OF NEW YORK, }
 (City and) County of (*New York*.) } ss.:

(*OLIVER WENDELL*), being duly sworn, says, that he resides at (*No. 50 Morningside Avenue in the Borough of Man-*

Form.

hattan, City of New York,) and is by occupation (*a physician*); that he is a citizen of the United States, twenty-one years of age and upwards; and that he is now in possession, and the owner in fee simple, of the premises known as (*No. 524 West 72nd street, in the Borough of Manhattan,*) in (*said city,*) this day to be (*conveyed*) by him to (*Charles Dudley.*)

Deponent further says that the said premises have been held by him for upwards of (*ten*) years last past, and that his possession thereof has been peaceable and undisturbed, and that the title thereto has never been disputed or questioned to his knowledge, nor does deponent know of any facts by reason of which said possession or title might be disturbed, or questioned, or by reason of which any claim to said premises, or any part thereof, might arise, or be set up adverse to this deponent; and that he is informed and believes that his grantors held the said premises for more than twenty years prior to the transfer to him; and that no person has any contract for the purchase of, or claim to or against said premises, except as hereinafter stated; and that the same are now free and clear of all taxes, incumbrances or liens by mortgage, decree, judgment, or by statute, or by virtue of any proceeding in any court, or filed in the office of the clerk of any county or court in this State, and of all other liens of every nature and description, save and except (*a mortgage given to secure the sum of ten thousand dollars to Richard Harding, which mortgage is recorded in the office of the Register of the County of New York, in Liber 2140, of Conveyances, Block Section 7, page 332.*)

Deponent further says that the said premises are now occupied by (*Alfred Johnson.*)

Deponent further says that he is married to (*Isabel Morison,*) who is over the age of twenty-one years, and who is the same person who executes, with deponent, the deed to the said premises; and that there are no judgments, or decrees, or attachments, or orders of any court or officer for the payment of money against him, or to which he is a party, unsatisfied or not cancelled of record in any of the courts, or before any officer of the United States, or this State, or any suit or proceedings pending anywhere affecting said premises, to his knowledge, information or belief, and that any judgments found of record against any person under the name (*Oliver Wendel*) are not against deponent, and that no proceedings in bankruptcy have ever been instituted by or against deponent.

Form Of.

Deponent makes this affidavit to induce (*Charles Dudley*,) above named, to accept a (*deed to the*) said premises, and pay the consideration therefor, knowing that the said (*Charles Dudley*) relies upon the truth of the statements herein contained.

(*OLIVER WENDELL*.)

Sworn to before me, this }
(*19th*) day of (*March*, 1905.) }

(*GEORGE GORDON*,)

Notary Public,

(*New York*) County.

AGREEMENTS.

NOTE.

In signing contracts or other instruments, the name of the principal should always appear first, and then "by" the name of the agent, as for example:

John Jones,

By *William Smith*, as his agent.

In the case of a negotiable instrument or a sealed document, it is vital who has signed, and the exact form of the signature, since in these cases as a rule only the person appearing in the document as a party can sue or be sued thereon. (118 *App. Div.* 208.)

If it is not a sealed document or negotiable instrument it is not so important, as a party who is not named may sue or be sued thereon as an undisclosed principal, and it only becomes important in that, if the agent has signed as a party he is liable, and no evidence can be offered to show the agent was acting as such, although evidence can be offered for the purpose of permitting the principal to sue, or a third party to sue the principal.

Corporation In Testimonium Clause.

FORM No. 392.

Corporation "In Testimonium" Clause.

IN WITNESS WHEREOF, the (*American Boat*) Company, the party of the first part, has caused its corporate seal to be hereto affixed and these presents to be signed by its (*president*) and (*secretary*), and the (*H. J. Hart*) Company, the party of the second part, has caused its corporate seal to be hereto affixed and these presents to be signed by its (*vice-president*) and (*secretary*) on the day and year first above written.

(*AMERICAN BOAT COMPANY*),

By

(*JAMES WILSON*),

(*President*.)

Signed, Sealed, and Delivered

in the presence of

(*FREDERICK STONE*.)

Attest:

(*WILSON BROWN*),

Secretary.

(*H. J. HART COMPANY*),

By

(*EMILE BOOS*),

(*Vice-President*.)

Signed, Sealed, and Delivered

in the presence of

Attest:

(*GEORGE ATWOOD*),

Secretary.

Retainer — Of Service And Hiring.

FORM No. 393.

Retainer on Contingent Basis.

(*New York, May 21, 1907.*)

Mr. (*James J. Maxwell,*
32 Liberty Street,
New York City.)

Dear Sir:

I hereby retain you as my attorney to prosecute a claim which I have against (*the Public Utilities Corporation of New York for damages for injuries sustained by me on the 28th day of March, 1904, at 42nd street and Broadway, in the City of New York, through the negligence of said corporation, its agents, servants and employees,*) and to represent me in any action brought for that purpose; and I agree to pay you (*twenty-five*) per cent. (25%) of any recovery obtained either as the result of an action or through compromise.

I agree also not to compromise said claim nor to accept any sum in settlement thereof without first obtaining your consent thereto.

Yours truly,

(*FRANK BURDEN.*)

FORM No. 394.

Agreement of Service and Hiring.

Agreement made this (*second*) day of (*January,*) one thousand nine hundred and (*five,*) between (*The China Trading Company, a corporation organized under the laws of the State of New Jersey, and having its principal office at 95 Pearl street, in the Borough of Manhattan, City of New York,*) hereinafter called (*the Company,*) and (*Frank Thompson*) of (*Orange, New Jersey,*) hereinafter styled (*the salesman;*) witnesseth:

1. The said (*salesman*) has agreed and hereby does agree to enter into the service of (*the Company*) as a (*traveling salesman*) for a period of (*two years*) beginning on the (*first*) day of (*February, 1905.*)

2. The said (*salesman*) agrees to devote the whole of his time, attention and energies to the performance of his duties as such (*salesman,*) subject to the general control of (*the Company,*) and

Of Executor With Creditor To Refer Claim.

to serve (*the Company*) diligently and according to the best of his ability in all respects, and further agrees not to represent or to be in any way connected either directly or indirectly with any other business during said period. And said (*salesman*) further agrees (*to keep proper books of account, and to make complete and correct entries of the price and amount of all goods sold by him, and from time to time as directed by the Company to submit at its New York office such accounts and reports of all sales, transactions and dealings had, of, in and in relation to the business of the Company.*)

3. (*The Company*) agrees to pay the said (*salesman*) a salary of (*sixty*) (60) dollars per (*week*), payable (*weekly*) from the commencement of the said service (*and a commission of two and one-half per centum (2½%) upon all sales made by said salesman for the Company or secured by the Company through his efforts during the said period over and above the sum of seventy-five thousand (\$75,000) dollars per annum. Said commissions to be adjusted semi-annually on the last days of January and June of each year and to be payable within ten days thereafter and to be based only upon sales actually completed and paid for on the date of each adjustment.*)

5. (*The Company*) agrees to pay to the said (*salesman*) weekly in addition to his salary, all reasonable traveling expenses and hotel bills incurred by him in connection with the business of (*the Company*.)

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

(*THE CHINA TRADING CO.,*)

By

(SEAL.)

(*JAMES L. FOSTER,*) Pres.

(*FRANK THOMPSON.*) (SEAL.)

(Acknowledgments.)

FORM No. 395.

Agreement of Executor with Creditor to Refer Disputed Claim.

WHEREAS, (*Oliver Hobbs,*) of (*the Borough of Manhattan, City of New York,*) has lately presented to (*Charles Dann,*) the executor of the last will and testament of (*Gerald Hobbs,*) late of (*the Borough of Richmond, City of New York,*) deceased, a claim

Party Wall.

for (*two hundred and ten*) (\$210) dollars, a copy whereof is hereto attached, the justice of which claim is doubted by the said executor and a controversy has thereupon arisen, the said (*Oliver Hobbs*) and (*Charles Dann*), as executors of the last will and testament of (*Gerald Hobbs*), deceased, have agreed, and hereby do agree, to refer the matter in controversy to (*Charles Ingalls, counsellor at law*), as sole referee to hear and determine the same.

(Signed)

(*OLIVER HOBBS*),

(Signed)

(*CHARLES DANN*),

As Executors of the Last Will and Testament of (*Gerald Hobbs*), deceased.

Dated, (*New York, May 9th, 1905.*)

(Acknowledgment.)

I hereby approve of the referee named in the foregoing agreement.

(*ABNER C. THOMAS*),

Surrogate.

FORM No. 396.

Party-Wall Agreement.

WHEREAS, (*Charles Brown*) and (*Thomas Simpson, both*) of (*the Borough of Manhattan, in the City of New York*), are the owners respectively of two adjoining parcels of land situate (*on the east side of West End Avenue, in the Borough of Manhattan, City of New York*), the line dividing said parcels being (*60 feet north of and parallel to the center line of West 92nd street*), and running (*at right angles to the street line of West End avenue*), and the said (*Charles Brown*) being the owner of the parcel (*south*) of said line and said (*Thomas Simpson*), the owner of the parcel (*north*) of said line; and

WHEREAS, the said parties are desirous of providing for the erection of a party wall on said line, now, therefore, this agreement, made the (*first*) day of (*May, 1905*), by and between said (*Charles Brown*), party of the first part, and said (*Thomas Simpson*), party of the second part, witnesseth:

1. Whichever of the parties hereto shall first erect a building adjoining said line shall erect a wall thereon, of such length as

Party Wall.

such party shall see fit, which wall shall be constructed of good materials and workmanship, and shall conform to the requirements of the building laws (*and regulations of the Building Department of the City of New York;*) but not more than six inches in thickness of said wall with its proportion of necessary foundation shall be placed on the land of the other party without the consent of such party.

2. Said wall shall, when so built, be and remain a party wall.

3. Whenever the owner of the other parcel shall use said wall or any part thereof he shall pay to the person who shall at that time own the parcel first built upon, such proportion of the then value of the said wall including necessary piling, foundation or other sub-structure and coping, as the portion of the said wall used by said party shall bear to the entire structure of such wall.

4. Either of the parties hereto may add to said party wall in length, thickness, height or depth and may repair, or in case of destruction, rebuild same and any addition thereto.

The party making repairs to or rebuilding said wall or any addition thereto shall make said repairs or reconstruct said wall in such a way as to leave the other party as nearly as may be in the same condition with respect to said wall as before, and shall use good materials and workmanship, and shall do all work connected with said repairs or rebuilding from his own side of the dividing line in case the other parcel is built upon, and shall conform same to the requirements of the building laws, (*and regulations of the Department of Buildings of the City of New York.*) One-half of any repairs so made, shall be paid to the party making the same by the owner of the other parcel, if said party wall or any part thereof has been used as hereinbefore provided by such owner, on demand; and one-half of the value of any such rebuilt wall or of any addition made as aforesaid shall be paid for by the owner of the other parcel when used, upon the same terms as hereinbefore provided for the original wall, any addition made to said wall in length shall be uniform in thickness with the original wall, but no addition to the thickness of said wall shall be made by either of the parties hereto upon the land of the other unless such land is vacant, and in no event so as to cause more than six inches of said wall inclusive of said addition, with the proportion of necessary foundation to be upon the land of the other party without the consent of such party.

Of Indemnity.

5. In consideration of the foregoing and of (*one dollar*,) lawful money of the United States to each of the parties hereto, by the other party in hand paid, the receipt of which is hereby acknowledged, the said parties, for themselves and their respective heirs and assigns do mutually covenant and agree each to and with the other, his heirs, representatives and assigns, to keep and in all respects observe the foregoing agreement, and that the covenants therein contained shall run with the land but that no owner is to be responsible except for his acts and defaults while owner.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written.

(*CHARLES BROWN*,) (SEAL.)
(*THOMAS SIMPSON*.) (SEAL.)

(Acknowledgment.)

FORM No. 397.

Agreement of Indemnity (Without Sureties).

THIS AGREEMENT, made the (*fifteenth*) day of (*April*) in the year one thousand nine hundred and (*five*), by and between (*Henry Warren*,) of (*the Borough of Manhattan, City of New York*,) party of the first part, and (*Roger Lambert and Walter Lambert and Gilbert Vernon, all of Orange, Essex county, State of New Jersey, doing business as co-partners at No. 120 Broadway, in the Borough of Manhattan, City of New York, under the name and style of Roger Lambert & Co.*,) parties of the second part, witnesseth:

WHEREAS, (*a bill of exchange for one thousand dollars, bearing date January 6, 1905, drawn by Joseph Arnold upon Roger Lambert & Co., the parties hereto of the second part, and by them accepted on January 10, 1905, and which is now the property of Henry Warren, the above-named party of the first part, has been lost and cannot be produced by him;*) and

WHEREAS, at the request of the said party of the first part, and upon his promise to indemnify and save harmless the parties of the second part in the premises and (*to deliver up the said bill of exchange when found to the parties of the second part to be cancelled,*) the said parties of the second part have this day (*paid to the party of the first part the sum of one thousand dollars, the*

Building.

receipt whereof is hereby acknowledged, in full satisfaction and discharge of said bill of exchange:)

NOW, THEREFORE, in consideration of the premises and of the sum of (*one dollar,*) in hand paid to the party of the first part by the parties of the second part, the receipt whereof is hereby acknowledged, the said party of the first part does hereby agree and bind himself, his executors, administrators and assigns (jointly and severally) as follows, to wit:

First. That the said party of the first part, his heirs, executors, administrators and assigns shall and will at all times indemnify and keep indemnified and save harmless the parties hereto of the second part from and against all loss, damages, costs, charges, counsel fees and expense whatever which the said parties of the second part shall or may for any cause at any time sustain or incur by reason of (*the bill of exchange above described,*) or in consequence of (*having paid the same,*) and the party of the first part does covenant and agree to pay to the parties of the second part, their legal representatives or assigns, all sums of money which the parties of the second part, their legal representatives or assigns, may become liable for upon (*the said bill of exchange*) before the parties of the second part shall be compelled to pay the same, any sum so paid to be applied, however, to the payment of any liability of the parties of the second part upon (*the said bill of exchange or arising out of the payment of the same as aforesaid.*)

Second. That the party of the first part will, (*when and as soon as the said bill of exchange is found, deliver the same to the parties of the second part to be cancelled.*)

(HENRY WARREN.) (SEAL.)

(Witness.)

(CHARLES JONES.)

(Acknowledgment.)

FORM No. 398.

Agreement for Erection of Building.

ARTICLES OF AGREEMENT, made this (*thirty-first*) day of (*January,*) in the year nineteen hundred and (*four,*) between (*Helen King,*) of (*the Borough of Brooklyn, City of New York,*)

Building.

hereinafter called the owner, party of the first part, and (*Benjamin Boole*) of the same place, hereinafter called the contractor, party of the second part.

The party of the second part does hereby for himself, his heirs, executors and administrators, covenant and agree to, and with the party of the first part, (*her*) heirs, executors, administrators, and assigns, for the consideration hereinafter mentioned, on or before the (*twenty-fifth*) day of (*April*), nineteen hundred and (*five*), to well and sufficiently erect and finish a new building on (*Lot 53 Grand street, in the Borough of Manhattan, City of New York*), agreeably to and in conformance with the plans, drawings and specifications made by (*Charles Merlin*), architect, and signed by the parties hereto and hereto annexed, within the time aforesaid, in a good workmanlike and substantial manner, under the direction of and to the satisfaction of the said architect, to be evidenced by a certificate or statement in writing, signed by the said architect; and also to find and provide such good, proper and sufficient materials of all kinds whatsoever as shall be sufficient and proper for the completing and finishing of all the masons' and other work on said building, mentioned in the masons' specifications, for the sum of (*seventeen thousand and fifty*) dollars (\$17,050).

The party of the first part does hereby for herself, her heirs, executors and administrators, promise and agree in consideration of the covenants and agreements, herein contained, being strictly kept and performed by the party of the second part, as specified, to well and truly pay or cause to be paid to the said party of the second part, his heirs, administrators or assigns, the sum of (*seventeen thousand and fifty*) dollars (\$17,050), lawful money of the United States, in manner following:

First —(<i>When walls are up for second tier of beams..</i>	\$3,000)
Second —(<i>When walls are up for the fourth tier of beams</i>	2,000)
Third —(<i>When topped out.....</i>	2,500)
Fourth —(<i>When white mortar is on.....</i>	3,400)
Fifth —(<i>When completely finished.....</i>	6,150)
	<hr/>
	(\$17,050)
	<hr/>

Building.

Provided, that a certificate or statement, in writing, signed by (*Charles Merlin*,) architect, that each of said portions of the work has been completed to his satisfaction is obtained.

It is hereby further agreed by and between the said parties as follows:

First — The specifications and the drawings are intended to co-operate, so that any work exhibited in the drawings and not mentioned in the specifications, or *vice versa*, is to be executed the same as if it were mentioned in the specifications and set forth in the drawings, according to the true meaning and intention of the said drawings and specifications, without any extra charge whatever.

Second — The contractor at his own proper cost and charges is to provide all manner of materials and labor, scaffolding, implements, moulds, models and cartage of every description for the due performance of every part of said work.

Third — At any time during the progress of the work on said building the owner shall be at liberty to request any alteration or deviation, additions or omissions from the plans or specifications; upon such request, the same shall be made, and shall in no way affect or make void the contract, but the cost thereof shall be added to or deducted from the amount to become due on this contract, as the case may be, at a fair and reasonable valuation.

Fourth — Should the contractor, at any time during the progress of said work, refuse or neglect to supply a sufficiency of materials, implements or workmen for the proper performance of said work, the owner shall have the power to provide materials, implements and workmen, after giving three days' notice in writing to the contractor, to finish said work, and the expense shall be deducted from the amount of the contract.

Fifth — Should any dispute arise concerning the true construction or meaning of the drawings or specifications, the same shall be decided by the architect, and his decision shall be conclusive and final; but should any dispute arise concerning the true value of extra work or of work added or omitted in accordance with this contract, the same shall be valued by two competent persons — one to be employed by the owner and the other by the contractor — which persons shall have power to name a third competent person, in case they are unable to agree, and in such case a decision of a majority of said persons shall be binding on all parties.

Composition.

Sixth — The owner shall not in any manner be answerable or accountable for any loss or damage that may happen to the said work or any part thereof, or for any materials or other things used and employed in completing the same, loss or damage by fire alone excepted.

Seventh — The time stated within which the building is to be completed is understood to be in case the weather continues in a state to allow the work to go on, which is to be decided by the architect, and the time allowed to be added to the time above stated; and should the owner, while the work is in progress, request any addition to or deviation from the work called for in the drawings and specifications which shall require additional time to complete, such time shall be determined by the architect and added to the time above stated.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

(HELEN KING,) (SEAL.)

(BENJAMIN BOOLE.) (SEAL.)

(Acknowledgments.)

FORM No. 399.

Composition Agreement.

WHEREAS, (*John O. Wheeler,*) of (*the Borough of Manhattan, City of New York,*) hereinafter described as “the debtor,” is justly indebted in divers sums of money to us, his several creditors, and is unable by reason of losses and business reverses to satisfy our debts and claims in full; and

WHEREAS, we, the said creditors, have agreed to accept (*forty (40) cents*) for every dollar owing by the said debtor to us, in full satisfaction and discharge of all debts owing by the said debtor to us and each of us, respectively,

NOW, THEREFORE, we, the several creditors of the said debtor, for ourselves, respectively and severally, and for our respective and several heirs, executors, administrators and assigns, do covenant, compound, promise and agree to and with the said debtor and to and with each other, that we will accept and receive from the said debtor, for each and every dollar that the said

Composition.

debtor does owe to us and each of us, the sum of (*forty* (40) *cents*,) to be paid by the said debtor to us, his several and respective creditors, as follows: (*twenty-five* (25) *per cent.*) of the several amounts in which the said debtor is indebted to each of us is to be paid by the said debtor to each of us on or before the (*tenth*) day of (*January, nineteen hundred and four*,) in cash; (*ten* (10) *per cent.*) of the several amounts due to each of us from the said debtor is to be paid in promissory notes, dated (*the second day of January, nineteen hundred and four*,) and payable (*four months after date*,) with interest at (*six*) (6) per cent., to be made by the said debtor and delivered to each of us on or before the (*tenth*) day of (*January, nineteen hundred and four*; *five*) (5) per cent. of the several amounts due to each of us from the said debtor is to be paid in promissory notes, dated the (*second*) day of (*January, nineteen hundred and four*,) and payable (*six months after date*,) with interest at (*six*) (6) per cent., to be made by said debtor and delivered to each of us on or before the (*tenth day of January, nineteen hundred and four*,)

And we, the said creditors, do further covenant and agree that neither we nor any one of us will at any time hereafter sue, arrest, molest or disturb the said debtor, or his goods or chattels, for any debt or liability now existing against the said debtor in favor of us or any one of us; provided, however, that in case default be made by the said debtor in the part payment in cash, or in the delivery of the said notes, on or before the (*tenth*) day of (*January, 1904*,) this agreement shall be void and of no effect; and further provided that this agreement shall not in anywise prejudice or affect the right or remedies of any creditor against any surety or sureties or any person or persons other than the debtor, his heirs, executors or administrators, nor any security, which any of us, his several and respective creditors, may have or claim for any debt or debts of the said debtor.

It is further agreed that unless this composition agreement shall be accepted by all the creditors of the said debtor, and shall be signed by all of them on or before the (*fifteenth*) day of (*December, 1903*,) these presents shall be void and of no effect.

It is also expressly agreed that all of the covenants and agreements and conditions herein contained shall extend to and bind our several and respective executors, administrators and assigns, as well as ourselves respectively and severally.

Marriage.

IN WITNESS WHEREOF, we, the said several creditors of the said (*John O. Wheeler*,) have hereunto set our respective hands and seals this (*twenty-fifth*) day of (*November, 1903.*)

FORM No. 400.

Contract of Marriage — Pursuant to Subd. 4, Sec. 11, Art. 2, Dom. Rel. Law.

THIS AGREEMENT, made and entered into this (*twenty-ninth*) day of (*April*,) in the year one thousand nine hundred and (*five*,) at (*316 East Twenty-fourth street, in the Borough of Manhattan, City of New York*), by and between (*Charles H. Harrison*,) residing at (*14 Morningside avenue, in the Borough of Manhattan, City of New York*,) and (*Marian B. Lang*,) residing at (*216 West Ninety-fourth street, Borough of Manhattan, City of New York*,) in the presence of (*William Maxton*,) who resides at (*34 East Forty-first street, in the Borough of Manhattan, City of New York*,) and (*James T. Corning*,) who resides at (*22 West Twenty-ninth street, in the Borough of Manhattan, City of New York*,) Witnesseth that,

WHEREAS, the said (*Charles H. Harrison*) and (*Marian B. Lang*) have agreed to unite in the bonds of matrimony and become husband and wife from the date of these presents henceforth.

NOW, THEREFORE, in pursuance of subdivision 4 of section 11 of article second of the Domestic Relations Law, the said (*Charles H. Harrison*) and (*Marian B. Lang*) do hereby agree from the date of this contract to become, and hereby do become, husband and wife, and they hereby agree to assume the marital relations and obligations pertaining thereto.

IN WITNESS WHEREOF the said parties have executed this marriage contract in duplicate, and have signed and acknowledged the same the day and year first above written.

(*CHARLES H. HARRISON*,) (SEAL.)

(*MARIAN B. LANG*,) (SEAL.)

Signed, sealed and delivered }
in the presence of }

(*WILLIAM MAXTON*,)

(*JAMES B. CORNING*,)

To Share Expense Of Law Suit.

[Acknowledgment by parties and witnesses before a Judge of a Court of Record.]

NOTE.

By Ch. 742, L. 1907, taking effect January 1, 1908.

A marriage may be solemnized by a written contract of marriage signed by both parties and at least two witnesses who shall subscribe the same, stating the place of residence of each of the parties and witnesses and the date and place of marriage and acknowledged by the parties and witnesses in the manner required for the acknowledgment of a conveyance of real estate to entitle the same to be recorded, provided, however, that all such contracts of marriage must in order to be valid be acknowledged before a judge of a court of record. Such contract shall be recorded within six months after its execution in the office of the clerk of the county in which the marriage was solemnized. But as to securing marriage licenses prior to entering into the contract, see also Laws 1907, chapter 742, subdivision 8, taking effect January 1, 1908.

FORM No. 401.**Agreement to Share Expense of Law Suit.**

WHEREAS, (*James Oliphant, Henry Rogers, Charles Campbell and Thomas Perry,*) all of (*the City of White Plains, New York,* are owners respectively of four parcels of land situate on the easterly side of Westchester avenue, between Third and Fourth streets, in said City of White Plains, each of which parcel extends fifty (50) feet along the line of said avenue; and

WHEREAS, (*the City of White Plains has made an assessment of \$135.00 upon each of said parcels for certain public improvements in said City,*) as to the legality of which the parties hereto are desirous of obtaining a judicial determination; and

WHEREAS, (*James Oliphant,*) above-named, has retained counsel and is about to institute a proceeding in the (*Supreme*) Court of (*Westchester County*) to have (*the assessment upon the parcel of land owned by him reviewed and its legality determined,*) and the decision of such proceeding will in effect determine the legality of (*the assessment upon the parcels owned by each of the parties hereto:*)

To Share Expense Of Law Suit.

NOW, THEREFORE, in consideration of the foregoing it is agreed this (*third*) day of (*October, 1904,*) by and between the said (*James Oliphant, Henry Rogers, Charles Campbell and Thomas Perry,*) as follows:

I. The said (*James Oliphant*) agrees to promptly and vigorously prosecute the proceeding above referred to, and will by appealing to the (*Appellate Division of the Supreme Court and to the Court of Appeals of this State,*) if so advised by counsel, and by taking such other steps as he is advised by counsel are best suited to accomplish that purpose, endeavor to obtain a prompt and final determination as to the legality of (*said assessment, as to the amount thereof, and as to the method of making the same.*)

II. The said (*Henry Rogers, Charles Campbell and Thomas Perry*) respectively and severally agree to share and defray (*one-fourth*) of the amount of all expenses necessarily incurred by said (*James Oliphant*) in connection with the carrying on of the litigation above referred to, including the fees of attorneys and counsel and all costs and disbursements for which the said (*James Oliphant*) may become liable by reason of said litigation, and respectively and severally agree to pay to the said (*James Oliphant*) within (*thirty*) days from the date hereof the sum of (*two hundred*) (200) dollars each, to be applied towards defraying such expenses as they accrue.

And each of the terms of this agreement is intended to apply to and bind the executors, representatives and assigns of each of the parties hereto.

(Witness.)

(*SOLOMON KETCHUM,*)

(*JAMES OLIPHANT,*) (SEAL.)

(*HENRY ROGERS,*) (SEAL.)

(*CHARLES CAMPBELL,*) (SEAL.)

(*THOMAS PERRY.*) (SEAL.)

(Acknowledgments.)

Sale Of Real Property.

FORM No. 402.

Agreement for Sale of Property.*

AGREEMENT, made this (24th) day of (January, 1905,) between (Lewis Munson,) of (the Borough of Manhattan, City of New York,) hereinafter described as the seller, and (Leonore Fancher,) of (the same place,) hereinafter described as the purchaser,

WITNESSETH, That the seller agrees to sell and convey, and the purchaser agrees to purchase all that lot of land, with the buildings and improvements thereon, in the (Borough of Manhattan, City of New York,) and described as follows:

(metes and bounds)

[The seller agrees that there are no notices of violations of the Tenement House Department of the City of New York, or any other Municipal Department, uncomplained with as of January 18, 1905, and that he will remove all such violations prior to the closing of the title.]

[It is hereby understood and agreed between the parties hereto that the party of the first part is under contract for the purchase of the above-described premises, and should he be unable to secure good and sufficient title to the same, then and in that event this contract shall become null and void, and neither shall have any claim against the other by reason of the non-fulfillment of this contract, except that the seller shall repay to the purchaser the sum of two thousand dollars (\$2,000.00) with interest thereon at three per cent. (3%).]

The price is (thirty-eight thousand five hundred) (\$38,500) dollars, payable as follows: (Two thousand) (\$2,000) dollars on the signing of this contract, the receipt of which is hereby acknowledged. (Seven thousand five hundred) (\$7,500) dollars in cash or certified check on the delivery of the deed as hereinafter provided. (Twenty-five thousand (\$25,000) dollars by taking the said premises subject to a first mortgage, now a lien thereon for that amount, interest on which is at the rate of five per cent. (5%) per annum, principal due in November, 1907; held by Anna Upton.

Two thousand (\$2,000) dollars by taking said premises subject to a second mortgage, now a lien thereon for that amount.

* See Information to Obtain before Signing, pages 12 and 15.

Sale Of Real Property.

interest on which is at the rate of five per cent. (5%) per annum, principal due on or before two years from the date thereof.

Subject to leases expiring not later than May 1, 1905, and to monthly tenancies.)

(Two thousand (\$2,000) dollars by the purchaser executing and delivering to the seller his bond and purchase-money mortgage covering said premises for said sum of two thousand (\$2,000) dollars for three years with interest thereon at the rate of six per cent. per annum, payable semi-annually.)

(The said bond and mortgage to be in form satisfactory to the seller and to be prepared by the counsel for the seller at the expense of the purchaser. The purchaser shall also pay the recording tax on said mortgage and the recording fees.)

All fixtures and personal property appurtenant to or used in connection with said premises are included in this sale.

The deed shall be delivered upon the receipt of said payments at the office of (Carr & Carr) on (March 10, 1907, at 12 o'clock noon.)

The deed shall be a full covenant warranty deed in proper form, and shall be duly executed and acknowledged by the seller, at the seller's expense, to convey to the purchaser, or the purchaser's assigns, the absolute fee of the above premises, free of all incumbrances, except as above stated.

All instruments to be given hereunder are to be in the statutory short form.

Rents and interest on mortgage, if any, and insurance premiums are to be apportioned.

The risk of loss or damage to said premises by fire until the delivery of the deed is assumed by the (seller.)†

The stipulations aforesaid are to apply to and bind the successors, heirs, executors, administrators and assigns of the respective parties.

[The seller agrees that.....brought about this sale, and agrees to pay the broker's commission therefor.]

WITNESS the hands and seals of the above parties.

IN PRESENCE OF
(HENRY MARK,) (LEWIS MUNSON,) [L. s.]
(RICHARD MARKHAM,) (LEONORE FANCHER,) [L. s.]
(Acknowledgments.)

† "Buyer" sometimes inserted.

Exchange Of Real Property.

FORM No. 403.

Agreement for Exchange of Property.

AGREEMENT, made this (15th) day of (November, 1904,) between (Herbert Donovan,) of (the Borough of Manhattan, City of New York,) herein throughout described as the party of the first part, and (Paul Plum, of the Borough of Brooklyn, in said City of New York,) herein throughout described as the party of the second part, witnesseth:

I. That the party of the first part agrees to sell and convey, upon the terms and conditions hereinafter expressed, and the party of the second part agrees to purchase all that certain lot, piece or parcel of land, in (the Borough of Manhattan, City of New York,) with the buildings and improvements thereon, described as follows: (by metes and bounds).

II. The party of the second part agrees to sell and convey, upon the terms and conditions hereinafter expressed, and the party of the first part agrees to purchase all that certain lot, piece or parcel of land, in (the Borough of Brooklyn, City of New York,) with the buildings and improvements thereon, described as follows: (by metes and bounds).

The price which the party of the second part agrees to pay is (twenty thousand) (\$20,000) dollars, and is to be payable as follows:

(Five hundred) dollars on the signing of this contract, the receipts whereof is hereby acknowledged. (\$500)

(Five hundred) dollars in cash on the delivery of the deeds as hereinafter provided. (500)

(Twelve thousand) dollars by (taking the premises to be conveyed by the party of the first part subject to a first mortgage, now a lien on the premises for that amount, held by Joseph Stern, the interest on which is at the rate of five per cent. (5%) per annum, principal due in November, 1910) (12,000)

(Seven thousand) dollars by executing and delivering to the party of the first part or his assigns, at the expense of the party of the second part, a proper deed of the premises above-described as to be sold and conveyed by the party of the second part, the value of which it is hereby agreed is (\$18,000, subject to a first mortgage

Exchange Of Real Property.

for eleven thousand dollars, now a lien upon the said premises for that amount, held by John Brown, the interest at four per cent. (4%) per annum, principal due in June, 1905, which mortgage the party of the first part agrees to assume and discharge)..... (\$7,000)

The deeds of the premises to be conveyed shall be delivered at the office of (*Nash & Nash, 120 Broadway, Borough of Manhattan, City of New York,*) on the (*15th*) day of (*December, 1904,*) at (*twelve*) o'clock (*noon.*)

And the said party of the first part, on receiving such payment at the time and in the manner above-mentioned, shall, at his own expense, execute, acknowledge and deliver, to the said party of the second part, or the assigns of the party of the second part, a proper deed containing the usual full covenants and warranty for the conveying and assuring to the party of the second part, or the assigns of the party of the second part, the fee simple of the said premises free from all encumbrances except as herein stated.

[*The requirements of the Tenement House Commissioner, duly certified in writing upon a search for violations of the Tenement House Act affecting either of said premises, shall be complied with by the parties hereto prior to the time of the delivery of the deeds as herein provided.*]

The chandeliers, gas fixtures, ranges, heating and hot-water apparatus, water closets, bath tubs and other plumbing, and all personal property appurtenant to or used in connection with either of said premises are to be included in this sale and in the warranty above set forth.

The rents of each of the said premises, insurance premiums, and interest on mortgages, if any, shall be adjusted, apportioned and allowed up to the day of taking title to each.

The risk of loss or damage to said premises by fire or any other cause, until the delivery of the deeds, is assumed by each of the parties hereto as to the premises to be conveyed by him. It is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

All instruments to be given hereunder are to be in the statutory short form.

(The party of the first part agrees that

Continuing Guaranty.

brought about this exchange, and agrees to pay said broker his commission of dollars therefor.)

WITNESS the hands and seals of the above parties.

(HERBERT DONOVAN,) (SEAL.)

(PAUL PLUM.) (SEAL.)

In presence of

(ALFRED DAVIES.)

(Acknowledgments.)

FORM No. 404.

Continuing Guaranty Agreement.

WHEREAS, the (*Pittsburgh Manufacturing Company*) desires to establish a credit with the (*First National Bank, of New York,*) whereby it may obtain advances, loans or discounts from the said (*bank*):

NOW, THEREFORE, I, (*Anson Brown*) of (*the City of Pittsburgh, Pennsylvania,*) being the (*president*) of the said (*Pittsburgh Manufacturing Company*) in consideration of one dollar to me in hand paid, the receipt whereof is hereby acknowledged, and of the said loans, discounts or advances so to be made to said (*Pittsburgh Manufacturing Company,*) do promise and agree to and with said (*First National Bank, of New York,*) that the said (*Pittsburgh Manufacturing Company*) shall repay on demand to said (*First National Bank, of New York,*) any and all sums in which the said company shall be or become indebted or liable to said (*bank*) by reason of any or all of said discounts, loans or other advances, with interest thereon as the same may properly accrue.

AND, in default of such payment by said (*company,*) I promise and agree to pay the same on demand with interest; and to fully indemnify and save harmless the said (*bank*) against all loss, damage and injury by reason of said loans, discounts or advances, the same not to exceed at any one time an aggregate of (*one hundred thousand*) dollars (\$100,000) of principal.

THIS OBLIGATION is to be a continuing one for a period of (*two*) years from its date, and is to apply to and cover all overdrafts, loans, advances and discounts made during said period.

Dated, (*New York, May 2, 1905.*)

(ANSON BROWN.) (SEAL.)

(Acknowledgment.)

ASSIGNMENTS OF INSTRUMENTS.

FORM No. 405.

Assignment of Written Instrument (Short Form — Indorsed on Back).

For value received I hereby assign the within *bond* (*contract, etc.*) to (*Oliver Hobbs.*)

Dated, (*New York, March 1, 1905.*)

(*RICHARD ROLLINS.*)

(Acknowledgment.)

NOTE.

This form is only sufficient where a bare transfer of the subject assigned answers the intention of the parties. If any guaranty is intended or if any power of attorney can become necessary to enable the assignee to enforce his right or anything beyond a mere transfer can in any event become requisite the appropriate special clause should be added to the above.

When an assignment is taken of a thing in action not a negotiable instrument, the following rule should be observed:

I. Get a statement from the debtor in writing that he has no defense in law or equity.

II. On taking the assignment, the debtor should be notified thereof, demanding that all future payments be made to the assignee. Sometimes it is desirable to have the assignment recorded.

FORM No. 406.

Assignment of Instrument with Power to Sue (Indorsed on Back).

In consideration of (*one dollar*) and other good and valuable consideration the receipt of which is hereby acknowledged, I hereby sell, assign, transfer and set over to (*Oliver Hobbs,*) his executors, administrators and assigns, all my right, title and interest in and to the within (*bond*) (*contract of insurance, amount, etc.*); and I hereby give to the said (*Oliver Hobbs,*) his executors, administrators and assigns full power and authority for his or their own use and at his or their cost, to ask, demand, collect, receive, compound and give acquittance for the same or any part

Of Account.

thereof, and in my name or otherwise to prosecute and withdraw any suits or proceedings at law or in equity therefor.

In witness whereof I have hereunto set my hand and seal this (10th) day of (March, 1905.)

(RICHARD ROLLINS.) (SEAL.)

(Acknowledgment.)

FORM No. 407.

Assignment of Account.

KNOW ALL MEN BY THESE PRESENTS, That I, *Richard Rollins*, of (*the Borough of Manhattan, City of New York*), in consideration of (*one dollar*) lawful money of the United States, to me paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and other good and valuable considerations, have sold, assigned, transferred and set over, and by these presents do sell, transfer, and set over unto (*Oliver Hobbs*) of (*the City of Rochester, New York*), his executors, administrators and assigns, to his or their own proper use and benefit all moneys due upon the annexed account, or (*upon the sales and purchases of securities by me made upon and for the account of Henry Ross*), therein mentioned.

And I do hereby give the said (*Oliver Hobbs*), his executors, administrators and assigns, full power and authority, for his or their own use and benefit, but at his or their own cost, to ask, demand, collect, receive, compound and give acquittance for the same or any part thereof, and in my name or otherwise to prosecute and withdraw any suits or proceedings at law or in equity therefor.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this (*fifteenth*) day of (*March*, 1905.)

(RICHARD ROLLINS.) (SEAL.)

In presence of

(PETER STERLING.)

STATE OF NEW YORK, }
County of *New York*, } ss.:

On the (*fifteenth*) day of (*March*), in the year one thousand nine hundred and (*five*), before me personally came (*Richard*

Of Account As Collateral Security.

Rollins,) to me known and known to me to be the individual described in, and who executed the foregoing instrument, and he thereupon duly acknowledged to me that he had executed the same.

(*JOHN JEFFRIES,*)

Notary Public,
(*New York*) Co. No. (17.)

FORM No. 408.

Assignment of Account as Collateral Security for an Indorsement.

In consideration of (*one dollar,*) the receipt of which is hereby acknowledged, I, (*Richard Rollins,*) have sold, assigned, transferred and set over and by these presents do sell, assign, transfer and set over to (*Oliver Hobbs,*) his executors, administrators and assigns, any and all sums of money now due or to become due upon the annexed account upon and for the (*services rendered and materials furnished by me to Brown, Jones & Co.,*) therein mentioned. And I do hereby give the said (*Oliver Hobbs,*) his executors, administrators and assigns, full power and authority for his or their own use and benefit, but at his or their own cost, to ask, demand, collect, receive, compound and give acquittance for the same or any part thereof, and in my name or otherwise to prosecute and withdraw any suits or proceedings at law or in equity therefor.

This assignment, however, is made to secure the said (*Oliver Hobbs*) against any loss and damage which he may incur or sustain by reason of his indorsement of a promissory note made by (*Richard Rollins*) dated the (20th) day of (*March, 1905,*) for the sum of (\$7,000,) payable (*six months after date,*) and upon the condition that the payment of said note at maturity by the said (*Richard Rollins*) will render this assignment void, but otherwise this assignment to be of full force and virtue.

IN WITNESS WHEREOF I have hereunto set my hand and seal this (25th) day of (*March, 1905.*)

(*RICHARD ROLLINS.*) (SEAL.)

Signed and sealed in the presence of

(*JAMES BRENNAN.*)

(Acknowledgment.)

Judgment.

FORM No. 409.

Assignment of Judgment.

KNOW ALL MEN BY THESE PRESENTS, that

WHEREAS, (*I*,) (*Ralph Burke*, of the *City of Syracuse*, *New York*,) did on the (*sixteenth*) day of (*June*, 1901,) recover judgment in the (*Supreme Court of the State of New York*) against (*Thomas Martin and John Rogers*) for the sum of (*one thousand dollars*,) which judgment was duly entered and docketed in the office of the Clerk of the (*County of New York*) on the (*seventeenth*) day of (*March*,) in the year one thousand nine hundred and (*one*,) now, (*I*,) the said (*Ralph Burke*,) in consideration of (*one dollar*,) to (*me*) duly paid, have sold, and by these presents do assign, transfer and set over unto (*William Rogers*,) of (*the City of Rochester*,) his executors, administrators and assigns, the said judgment and all sum or sums of money that may be had or obtained by means thereof, or on any proceedings to be had thereupon. And (*I*) do hereby constitute and appoint the said (*William Rogers*,) and his executors, administrators and assigns, my true and lawful attorneys, irrevocable, with power of substitution and revocation, for the use and at the proper costs and charges of the said (*William Rogers*) his executors, administrators and assigns, to ask, demand and receive, and to sue out executions, and take all lawful ways for the recovery of the money due or to become due on the said judgment, and on payment to acknowledge satisfaction, or discharge the same. And attorneys one or more under him or them for the purpose aforesaid, to make and substitute, and at pleasure to revoke; hereby ratifying and confirming all that said attorney or substitute shall lawfully do in the premises. And (*I*) do covenant, that there is now due on the said judgment the sum of (*one thousand dollars*) with interest from (*March 17th*, 1905,) and that (*I*) will not collect nor receive the same, or any part thereof, nor release nor discharge the said judgment, but will own and allow all lawful proceedings therein, the said (*William Rogers*,) his executors, administrators and assigns, saving me harmless of and from any costs in the premises.

IN WITNESS WHEREOF, (*I*) have hereunto set my hand and seal the day and year first above written.

(*RALPH BURKE*.) (SEAL.)

Sealed and delivered in the presence of

(*GEORGE MORGAN*.)

(Acknowledgment.)

See §§ 1260-1266, Code.

FORM No. 410.

Assignment of Lease.

KNOW ALL MEN BY THESE PRESENTS, that I, (*Harvey Edwards*,) of (*the Borough of Manhattan, City of New York*,) for and in consideration of the sum of (*one dollar*) lawful money of the United States, (*and other good and valuable consideration*) to (*me*) duly paid, by (*Lion Company, of New York City, a corporation of New York State*,) hereinafter called the party of the second part, have sold, and by these presents do grant, convey, assign, transfer and set over, unto the said party of the second part, a certain indenture of lease bearing date the (*28th*) day of (*October*,) in the year one thousand nine hundred and (*three*,) made by (*Josephine Stein, as executrix and trustee, and Alexander Stein, as executor and trustee of the last will and testament of Conrad Stein, to Daniel Noble*,) of a part of the premises known as (*No. 839 Tenth avenue, in the Borough of Manhattan, in the City of New York*,) and recorded in the office of the (*Register*) of the County of (*New York*) on the (*10th*) day of (*December, 1903*,) in Liber (*96, section 4*,) of *Conveyances*, page (*154*,) and indexed under (*block number 1086 on the land map of the City of New York and assigned by Daniel Noble to the party of the first part by assignment bearing date February 15, 1904, and recorded on the 16th day of February, 1904, in section 4, Liber 98, page 102*,) together with all and singular the premises therein mentioned and described, and the buildings thereon, together with the appurtenances.

TO HAVE AND TO HOLD the same unto the said party of the second part, its successors and assigns, from the day of the date of these presents for and during all the rest, residue, and remainder yet to come of and in the term of ten years mentioned in the said Indenture of Lease, subject nevertheless, to the rents, covenants, conditions and provisions therein also mentioned. And (*I*) do hereby covenant, grant, promise and agree, to and with the said party of the second part that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments, and incumbrances whatsoever.

Lease — Undivided Half.

IN WITNESS WHEREOF, (I) have hereunto set (*my*) hand and seal this (*tenth*) day of (*December,*) one thousand nine hundred and (*four.*)

Sealed and delivered in the presence of

(*HARVEY EDWARDS.*) (*SEAL.*)

(*WILLIAM ASTOR.*)

STATE OF *NEW YORK*, }
 County of (*New York,*) }^{ss.:}

On the (*tenth*) day of (*December,*) in the year one thousand nine hundred and (*four,*) before me personally came (*Harvey Edwards,*) to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and (*he*) duly acknowledged that he executed the same.

(*FRANCES BROWN,*)

Notary Public,

(*New York*) Co. No. (31.)

FORM No. 411.

Assignment of Lease (Undivided Half).

AGREEMENT made at the (*Borough of Manhattan, in the City of New York,*) this (*third*) day of (*March, 1904,*) by and between (*Robert White*) and (*Edward T. Davis, both of the City of Philadelphia, in the County of Philadelphia and State of Pennsylvania,*) for and in consideration of the sum of (*one*) dollar to each of the parties paid by the other of them, the receipt whereof is hereby acknowledged, the said parties for themselves, their legal representatives and assigns promise and agree to and with each other in the manner following, that is to say:

(1) The said (*Robert White*) has sold and conveyed and by these presents does grant, convey, assign, sell, transfer and set over unto the said (*Edward T. Davis*) an undivided half of a certain Indenture of Lease bearing date the (*third*) day of (*March, 1904,*) made between (*Henry Kirk, of Bellport, Suffolk County, New York,*) of the first part and the said (*Robert White*) of the second part, and recorded in the office of the (*Register*) of the County of (*New York*) on (*April 1, 1904,*) in (*Block Series,*

Of Mortgage — Without Recourse.

Conveyances, Section 4, Liber 96, page 407,) and indexed under (*Block No. 999 on the Land Map of the City of New York.*)

(2) The said (*Edward T. Davis*) hereby agrees and covenants to accept the assignment of said undivided one-half of said Indenture of Lease with the same force and effect as if he were mentioned as one of the lessees and one of the parties of the second part in said Indenture of Lease.

(3) The said (*Robert White*) and (*Edward T. Davis*) hereby covenant and agree to bear and share equally all and every the burdens, covenants, conditions and provisions in the said Indenture of Lease and to divide equally share and share alike all and every the rents, income, profit and revenue arising out of or by virtue of the said Indenture of Lease.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first hereinabove written.

(*ROBERT WHITE,*) (SEAL.)

(*EDWARD T. DAVIS.*) (SEAL.)

FORM No. 412.

Assignment of Mortgage — Without Recourse.

KNOW ALL MEN BY THESE PRESENTS, that I, (*Margaret Kimble Van Winkle, at present residing temporarily at Paris, in the Republic of France,*) party of the first part, in consideration of the sum of (*two thousand five hundred dollars*) (\$2,500), lawful money of the United States, to (*me*) in hand paid by (*Edward H. Van Winkle,*) of (*the Borough of Manhattan and City of New York,*) party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over, unto the said party of the second part, a certain Indenture of Mortgage, bearing date the (*twenty-sixth*) day of (*July,*) in the year one thousand nine hundred and (*one*), made by (*Walter T. Rosen (unmarried), of the Borough of Manhattan, in the City of New York,*) to me, the party hereto of the first part, to secure the payment of the principal sum of (*two thousand five hundred dollars*) and interest, and duly recorded in the office of the (*Register*) of the County of (*New York,*) on the (*26th*) day of (*July, 1901,*) in (*Block Series*

Of Mortgage — Without Recourse.

Mortgages (Section 4,) Liber (103,) page (107,) and indexed under (*Block number 1240 on the land map of the City of New York,*) together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To have and to hold the same unto the said party of the second part, his executors, administrators and assigns forever, subject only to the proviso in the said indenture of mortgage mentioned:

And (*I*) do hereby make, constitute and appoint the said party of the second part my true and lawful attorney, irrevocable in (*my*) name or otherwise, but at (*his*) proper costs and charges, to have, use and take, all lawful ways and means for the recovery of the said money and interest; and in case of payment to discharge the same as fully as (*I*) might or could do if these presents were not made, this assignment being made without recourse to me, the party hereto of the first part, or to my heirs, executors or administrators in any case or event whatsoever.

IN WITNESS WHEREOF, (*I*) have hereunto set (*my*) hand and seal, the (15th) day of (*April,*) in the year one thousand nine hundred and (*one.*)

(*MARGARET KIMBLE VAN WINKLE.*) (SEAL.)

Sealed and delivered
in the presence of

(*J. ALLISON BOWEN.*)

UNITED STATES CONSULATE GENERAL, }
(*In the City of Paris, in the Republic of France,*) }^{ss.:}

On the (*fifteenth*) day of (*April,*) in the year one thousand nine hundred and (*one,*) before (*me, the Deputy Consul General of the United States of America, resident in said City of Paris, in the Republic of France,*) personally came (*in the said City of Paris, in the Republic of France, Margaret Kimble Van Winkle,*) to me known and known to me to be the individual described in and who executed the foregoing instrument, and (*she*) duly acknowledged that (*she*) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said United States, (*Consulate at the City of Paris, in the Republic of France,*) the day and year first above written.

(*J. ALLISON BOWEN,*)

United States (*Deputy*) Consul (*General,*)

(*At Paris, France.*)

Of Mortgage — Covenant Amount Due.

FORM No. 413.

Assignment of Mortgage (Covenant of Amount Due).

KNOW ALL MEN BY THESE PRESENTS, that (*I*) (*Norman M. Pullman,*) of (*the Borough of Manhattan, City of New York,*) party of the first part, in consideration of the sum of (*two thousand*) dollars, lawful money of the United States, to (*me*) in hand paid by (*Herbert Diamond,*) of (*the same place,*) party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part, that certain indenture of mortgage, bearing date the (*5th*) day of (*July,*) in the year one thousand nine hundred and (*five,*) made by (*Martin Sumner*) of (*the Borough of Manhattan, City of New York,*) and duly recorded in the office of the (*Register*) of the County of (*New York,*) on the (*5th*) day of (*July, 1905,*) in (*Block Series (Mortgages Section 7), Liber (264), page (401),*) and indexed under (*Block Number 12,*) on the Land Map of (*the City of New York,*) together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest, to have and to hold the same unto the said party of the second part, his heirs and assigns forever, subject only to the proviso in the said indenture of mortgage mentioned; and (*I*) do hereby make, constitute and appoint the said party of the second part my true and lawful attorney, irrevocable in (*my*) name or otherwise, but at his proper cost and charges, to have, use and take all lawful ways and means for the recovery of the said money and interest; and in case of payment, to discharge the same as fully as (*I*) might or could do if these presents were not made.

And the party of the first part does covenant and agree with the party of the second part that there is owing upon the said bond and mortgage, without offset or defense, the principal sum of (*two thousand five hundred*) dollars with interest at four per centum per annum from the (*eleventh*) day of (*November,*) nineteen hundred.

IN WITNESS WHEREOF, (*I*) have hereunto set my hand and seal, the (*25th*) day of (*July,*) in the year one thousand nine hundred and (*five.*)

Sealed and delivered in the
presence of

(*NORMAN M. PULLMAN.*) (SEAL.)

Patent.

STATE OF *NEW YORK*, }
County of (*New York*), } ss.:

On this (25th) day of (*July*), in the year of our Lord one thousand nine hundred and (*five*), before me the undersigned personally came and appeared, (*Norman M. Pullman*), to me personally known and known to me to be the individual described in and who executed the within instrument, and he acknowledged to me that (*he*) executed the same.

(*THOMAS MERRILL*),

Notary Public,
(*New York*) County.

FORM No. 414.**Assignment of Invention And Patent.***

WHEREAS, (*I, John Doe*), of (*the City of New York, County of New York, State of New York*), have made certain new and useful inventions in (*Can Openers*) for which Letters Patent, of the United States have been issued to (*me*), numbered (413,751,) and dated (*January 2, 1907*), and (*I*) am now the sole owner thereof and of all rights thereunder; and

WHEREAS, (*Richard Roe & Co., a corporation organized and existing under the laws of the State of New York*), desires to acquire the entire right, title and interest in and to said invention and said Letters Patent:

NOW THEREFORE, BE IT KNOWN, that for and in consideration of (*One Hundred Dollars*) (\$100.), the receipt whereof is hereby acknowledged, (*I, John Doe, do*) hereby bargain, sell, assign, transfer and set over to the said (*Richard Roe & Co., its successors*) and assigns, the entire right, title and interest in and to the said Letters Patent; and to said invention for the United States, and for the same consideration, I hereby covenant and agree that (*I*) will execute any and all further documents or instruments, further assurance of title, and make any application for letters patent, in (*my*) own name, when necessary, and do and perform all further acts, at the expense, however, of said

* Assignments and grants should be recorded in the United States Patent Office to effectuate constructive notice.

Patent.

(*Richard Roe & Co.*), necessary or desirable to effectuate the purpose of this instrument.

IN WITNESS WHEREOF, (*I*) have hereunto set (*my*) hand and seal this (6th) day of (*August*, 1907).

(*JOHN DOE.*) (SEAL.)

In the presence of

(*THOMAS GREEN,*)

(*WILLIAM BLUE.*)

(Acknowledgment.)

(Of Patent and Right of Action for Past Infringement.)

Add to Form 414.

For the same consideration, (*I*) bargain and sell, assign and set over to my said assignee, any or all causes of action or claim for damages or profits which may have heretofore arisen by reason of the infringement of said patent, with the right to sue for and collect the same in (*my*) name or otherwise.

(Of Patent and Future Improvements.)

Add to Form 414.

For the same consideration, (*I*) agree to assign and set over in like manner, to the same parties, and for the same territory, all further inventions or improvements that (*I*) may make relating or cognate to the invention above described, or to the art or arts to which it belongs or relates, and (*I*) agree to make such applications for patent or patents as may be necessary to this end, provided (*I*) be at no expense in the matter.

(Including Right to Re-issue.)

Add to Form 414.

For the same consideration, (*I*) bargain and sell, assign and set over to my said assignee, all right that (*I*) may have to reissue, renew or extend said patent, or to procure other or further patents on said invention, as well as the title thereto, when procured, and agree to execute all papers and do all acts necessary to this end.

(With Agreement to Testify.)

Add the following covenant:

that (*I*) will, without further compensation, furnish to the said (*Richard Roe & Co., its successors*) and assigns, all information

Patent — Before Granted.

in (*my*) possession or control, for the purpose of sustaining (*my*) claim of right to the monopoly of said invention and the validity of said patent, or other facts pertaining thereto, and give testimony thereof when required in any suit, case or other proceeding involving any of the property or rights herein granted, provided that I be at no expense in the premises.

FORM No. 415.

**Assignment of Invention, Patent Application and Patent When
Issued.***

WHEREAS, (*I, John Doe*), of the (*City of New York, County of New York, State of New York*), have invented certain new and useful improvements in (*Can Openers*), and have made application for United States Letters Patent thereon, which application was filed (*December 15th, 1906*), and is serially numbered (*565, 303*); and

WHEREAS, (*Richard Roe & Co., a corporation organized and existing under the laws of the State of New York*), desires to acquire the entire right, title and interest in and to said Letters Patent when issued;

NOW THEREFORE, BE IT KNOWN, that for and in consideration of (\$100), the receipt whereof is hereby acknowledged, (*I, John Doe*), do hereby bargain, sell, assign, set over and transfer to the said (*Richard Roe & Co., its successors*) and assigns, the entire right, title and interest in and to the said invention for the United States, together with the same interest in any and all patents that may be issued thereon, and (*I*) hereby authorize and request the United States Commissioner of Patents to issue said patent or patents to (*me*) as assignor of (*my*) said assignee.

IN WITNESS WHEREOF, (*I*) have hereunto set my hand and seal this (*6th*) day of (*August, 1907*).

(*JOHN DOE.*) (SEAL.)

In the presence of

(*THOMAS GREEN,*)

(*WILLIAM BLUE.*)

(Acknowledgment.)

* See Notes to Form 414.

Territorial Interest In Patent.

FORM No. 416.

Grant of Territorial Interest.*

WHEREAS, (*I, John Doe*), of the (*City of New York, County of New York, State of New York*), have made certain new and useful inventions in (*Can Openers*), for which (*I*) have obtained United States Letters Patent, numbered (*413,751*), and dated (*January 2, 1907*), and (*am*) now the sole (*owner*) thereof and of all rights thereunder; and

WHEREAS, (*Richard Roe & Co., a corporation organized and existing under the laws of the State of New York, desires*) to acquire the entire right, title and interest in and to said Letters Patent for the State of (*New York, New Jersey and Pennsylvania*).

NOW THEREFORE, BE IT KNOWN, that for and in consideration of (*One Hundred Dollars*) (\$100), the receipt whereof is hereby acknowledged, (*I, John Doe*), (*do*) hereby bargain, sell, assign, set over and transfer to the said (*Richard Roe & Co., its successors*) and assigns, the entire right, title and interest in and to the said Letters Patent:

Within and throughout the States of (*New York, New Jersey and Pennsylvania*), but not elsewhere.

IN WITNESS WHEREOF, (*I*) have hereunto set (*my hand*) and (*seal*) this (*6th*) day of (*August, 1907*).

In the presence of (*JOHN DOE.*) (*SEAL.*)
(*THOMAS GREEN,*)
(*WILLIAM BLUE.*)

(Acknowledgment.)

FORM No. 417.

License.

WHEREAS, (*I, John Doe*), of the (*City of New York, County of New York, State of New York*), have invented certain new and useful improvements in (*Can Openers*), for which I have obtained United States Letters Patent, (*numbered 413,751*), and dated (*January 2, 1907*), and (*am*) now the sole (*owner*) thereof and of all rights thereunder; and

* See Notes to Form 414.

Patent.

WHEREAS, (*Richard Roe & Co., a corporation organized and existing under the laws of the State of New York, desires*) to acquire a license under said Letters Patent;

NOW THEREFORE, BE IT KNOWN, that for and in consideration of (*One Hundred Dollars*) (\$100), the receipt whereof is hereby acknowledged, (*I, John Doe, do*) hereby grant unto (*Richard Roe*) the license and privilege and empower the said (*Richard Roe & Co., its successors*) and assigns, to manufacture and sell, in the States of (*New York, New Jersey and Pennsylvania*) and not elsewhere subject to the conditions hereinafter named the invention described and claimed in said Letters Patent.

[Insert the conditions of the License.]

The above mentioned licensee hereby accepts said license and agrees to abide by and perform the same as hereinbefore provided.

IN WITNESS WHEREOF, (*I*) have hereunto set (*my hand*) and (*seal*) this (*6th*) day of (*August, 1907*).

(*JOHN DOE.*) (SEAL.)

In the presence of

(*THOMAS GREEN,*)

(*WILLIAM BLUE.*)

(Acknowledgment.)

FORM No. 418.

Bill of Sale — Stock in Trade and Good Will.

KNOW ALL MEN BY THESE PRESENTS, that (*I, Peter Smith,*) of (*the Borough of Manhattan, City, County and State of New York,*) of the first part, for and in consideration of the sum of (*one dollar in lawful money of the United States, and other valuable consideration,*) to (*me*) in hand paid, at or before the ensealing and delivery of these presents, by (*Edward Jones and James Brown,*) parties of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey unto the said parties of the second part, their executors, administrators and assigns, (*the business now conducted by me at No. 277 Broadway, Borough of Manhattan, City of New York, including the good-will thereof, lease, stock in trade, machines, fixtures and appurtenances, books, outstanding accounts and each and everything used by me therein. And I hereby authorize the parties of the second part or either of them to collect the said outstanding accounts, and in my name to give receipts therefor, and to indorse any checks made to me in payment thereof.*) To have and to hold the same unto the said parties of the second part, their executors, administrators and assigns forever. And (*I*) do, for (*myself, my*) heirs, executors and administrators, covenant and agree to and with the said parties of the second part, to warrant and defend the sale of the said (*business, good-will, etc.,*) hereby sold unto the said parties of the second part, their executors, administrators and assigns, against all and every person and persons whomsoever.

IN WITNESS WHEREOF, (*I*) have hereunto set (*my*) hand and seal this (*twenty-fifth*) day of (*February,*) one thousand nine hundred and (*five.*)

PETER SMITH. (L. S.)

Sealed and delivered
in the presence of

PETER STERLING.

Stock And Good Will.

SCHEDULE OF FOREGOING BILL OF SALE.

[]

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On the (*twenty-fifth*) day of (*February*,) in the year one thousand nine hundred and (*five*) before me personally came (*Peter Smith*,) to me known, and known to me to be the same person described in and who executed the within bill of sale, and he duly acknowledged to me that he executed the same.

(JOHN DONALDSON,)

Notary Public,
(*New York*) County.

NOTE.

A transfer of any portion of a stock of goods, wares or merchandise otherwise than in the ordinary course of trade in the regular and usual prosecution of the transferrer's business, or a transfer of an entire stock in bulk is, by chapter 722, Laws 1907, presumed to be fraudulent and void as against the creditors of the transferrer, unless the requirements of this act are complied with, but the act does not apply to sales by executors, administrators, receivers, assignees under a voluntary assignment for the benefit of creditors, trustees in bankruptcy or any public officer under judicial process.

BONDS.*

FORM No. 419.

Bond — For Sum of Money Secured by Mortgage (30 and 90 Day Clause).

KNOW ALL MEN BY THESE PRESENTS, that (*I, Edwin T. Rose, unmarried,*) of (*the Borough of Manhattan, in the City of New York,*) am held and firmly bound unto (*Margaret Kimball,*) of (*the Borough of Brooklyn, in the said City of New York,*) in the sum of (*two thousand five hundred*) (\$2,500) dollars, lawful money of the United States of America, to be paid to the said (*Margaret Kimball, her*) executors, administrators, or assigns: For which payment, well and truly to be made, (*I*) do bind (*myself, my*) heirs, executors and administrators firmly by these presents. Sealed with (*my*) seal, and dated the (*second*) day of (*January,*) one thousand nine hundred and (*five.*) The condition of the above obligation is such, that if the above bounden (*Edwin T. Rose, his*) executors, administrators, or assigns, or any of them, shall well and truly pay, or cause to be paid, unto the above-named (*Margaret Kimball, her*) executors, administrators, or assigns, the just and full sum of (*two thousand five hundred*) (\$2,500) dollars on the (*second*) day of (*January,*) which will be in the year one thousand nine hundred and (*ten*) and the interest thereon, to be computed from the (*second*) day of (*January, 1905,*) at and after the rate of (*five*) (5) per centum per annum, and to be paid semi-annually on the (*last*) days of (*June*) and (*December,*) in every year until the said principal sum shall be wholly paid; then the above obligation to be void, otherwise to remain in full force and virtue.

And it is hereby expressly agreed, that should any default be made in the payment of any instalment of principal or of the said interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax or assessment be hereafter imposed upon the premises described in the mortgage accompanying this bond and become due or payable, and should the said interest remain unpaid and in arrear for the space of thirty days, or said tax or assessment remain unpaid and in arrear for ninety days, then and from henceforth, that is to say, after the lapse or expiration of either one of the said periods, as the case may be, the aforesaid principal sum with all arrearages of interest thereon, shall, at the option of the said obligee, (*her*) exec-

* Mortgage Forms, page 851.

 Secured By Mortgage.

utors, administrators, or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

It is also agreed, that should any law be passed with respect to a tax on mortgages, as more fully set forth in the said mortgage, the obligor shall pay the said tax, or this bond may be and become due and payable as in the said mortgage more fully set forth.

(EDWIN T. ROSE.) [SEAL.]

Sealed and delivered
in the presence of

(JOHN T. WADSWORTH.)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*second*) day of (*January*, 1905,) before me personally came (*Edwin T. Rose*,) to me known and known to me to be the individual described in and who executed the foregoing bond, and (*he*) acknowledged that he executed the same.

(ARTHUR C. TOMPKINS,)

Notary Public,

(*New York*) County.

 FORM No. 420.

Bond — For Sum of Money Secured by Mortgage (30-30 Day Clause).

KNOW ALL MEN BY THESE PRESENTS, that (*I, Martin Sumner*,) of (*the Borough of Manhattan, City of New York*,) hereinafter designated as the obligor, do hereby acknowledge (*myself*) to be indebted to (*Norman M. Pullman*) of (*the same place*,) hereinafter designated as the obligee, in, the sum of (*three thousand*) dollars, lawful money of the United States, which sum (*I*), said obligor, do hereby covenant to pay to said obligee, his heirs, administrators or assigns, on or before the (*first*) day of (*July*,) nineteen hundred and (*ten*,) with interest thereon, to be computed from the (*first*) day of *July*, 1905, at the rate of *four* per centum per annum, and to be paid on the (*last*) day of (*June*,) next ensuing the date hereof, and semi-annually thereafter.

If the principal secured by this bond be not paid on its due date, then the principal sum shall not be payable by the part(y) of the

Secured By Second Mortgage.

first part nor by any owner of the premises described in the mortgage accompanying the same, until the last day of the following month, and if not paid then said principal shall not be payable by the part(y) of the first part nor by any owner of the mortgaged premises except on the (30th) day of (June) of any year thereafter; but any holder of this bond may elect at any time after such default that the whole principal sum shall be due and payable immediately and thereupon the holder of this bond may enforce the same as if the time when payment could be made had not been postponed.

And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of said obligee after default in the payment of interest for thirty days, or after default in the payment of any tax or assessment for thirty days. All of the covenants and agreements made by the said obligor in the mortgage covering premises therein described and collateral hereto are hereby made part of this instrument. Signed and sealed this (1st) day of July, 1905.)

(MARTIN SUMNER.) [SEAL.]

Sealed and delivered in the
presence of

(WILLIAM GRACE.)

STATE OF NEW YORK, }
County of (New York,) } ss.:

On this (5th) day of (July,) in the year nineteen hundred and (five,) before me came (Martin Sumner,) to me known to be the individual described in, and who executed the foregoing instrument, and acknowledged before me that (he) executed the same.

(WILLIAM CORBIN,)

Notary Public,
(New York) County, (No. 5.)

FORM No. 421.

Bond for Payment of Money — Secured by Second Mortgage.

KNOW ALL MEN BY THESE PRESENTS, That (I, James Judson) of (the Borough of Manhattan, City of New York,) part(y) of the first part, do hereby acknowledge (myself) to be justly indebted unto (Cornelius Curzon,) of (the Borough

Secured By Second Mortgage.

of Brooklyn, City of New York,) part(y) of the second part, in the sum of (*ten thousand* 10,000) dollars, lawful money of the United States of America, to be paid to the said part(y) of the second part, or the (*heirs*,) legal representatives or assigns of the same, for which payment, to be made, together with the interest as hereinafter provided, (*I do*) bind (*myself*) and (*my*) heirs, executors and administrators, firmly by these presents. Sealed with (*my*) seal, dated the (*fifth*) day of (*March*,) in the year nineteen hundred and (*six*.)

The condition of the above obligation is such, that if the above bounden part(y) of the first part, (*his*) heirs, executors or administrators, shall pay, or cause to be paid, unto the above-named part(y) of the second part, or the (*heirs*,) legal representatives or assigns of the same, the said indebtedness (*on the fifth day of March, 1908, and interest thereon to be computed from the fifth day of March, 1906, at the rate of five per centum per annum and to be paid in semi-annual instalments on the fifth day of every month of March and September hereafter ensuing until the aforesaid indebtedness is fully paid*,) then the above obligation to be void, otherwise to remain in full force and virtue.

And it is hereby expressly agreed, that the whole of said indebtedness shall, at the option of the part(y) of the second part, or the (*heirs*,) legal representatives or assigns of the same, become due, after default in the payment of any instalment of principal, or after default for twenty days in the payment of interest, or after default for sixty days in the payment of any tax, assessment or water rent which may be levied or imposed upon the premises described in the mortgage accompanying this obligation, or after default for twenty days in the payment of any instalment of principal or of interest on any mortgage which may be a prior lien on said premises, or immediately after any action or proceeding shall have been instituted for the foreclosure of any such prior mortgage; or in the event of the actual or threatened, partial or total demolition or removal of any building erected on said premises.

And it is further agreed that the part(y) of the second part, or the (*heirs*,) legal representatives or assigns of the same, after default in the payment of interest on any such prior mortgage, or in case any action or proceeding shall have been instituted for the foreclosure of any such prior mortgage, or after default in the payment of any tax, assessment or water rent which may be

For Performance Of Contract.

imposed upon said premises, may, without notice or demand, pay such interest, and the costs and expenses of any such action or proceeding, and such tax, assessment or water rent, together with the interest and penalties accrued thereon, and add the amount so paid to the amount of this obligation, and the same shall be collectible as if it were a part hereof.

AND IT IS FURTHER AGREED, that all the covenants and conditions to be kept and performed by the said part(y) of the first part, contained in said mortgage, shall be deemed to be part of this obligation as if herein specifically and at length set forth.

In presence of (JAMES JUDSON.) [L. s.]

.....

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On the (*fifth*) day of (*March*), in the year nineteen hundred and (*six*), before me personally came (*James Judson*), to me personally known, and known to me to be the individual described in, and who executed the foregoing instrument, and (*he*) duly acknowledged to me that he executed the same.

(ARTHUR ASTON,)

Notary Public,

(*New York*) County.

FORM No. 422.

Bond — For Faithful Performance of Contract.

WHEREAS, (*Thomas Lasher*) and (*Frank L. Lasher, doing business as L. M. Lasher & Sons, of Easton, Pa.*) by an instrument in writing under their hands and seals, bearing (*even*) date (*with these presents*) have contracted with (*the City of Middletown, New York*), to (*furnish materials and perform all labor necessary to construct a storage reservoir*) upon the terms and conditions set forth in said contract, (*and according to the specifications, annexed to and forming part of said contract*), and is required by said (*City of Middletown*) to furnish a good and sufficient bond in the sum of (*ten thousand*) (\$10,000) dollars that they will perform said contract in accordance with the terms and specifications thereof; and

Of Indemnity.

WHEREAS, the (*Manhattan Indemnity Company, a corporation duly authorized by the laws of the State of New York to execute bonds of suretyship,*) is willing to become surety for the faithful performance of said contract by the said (*Thomas Lasher*) and (*Frank L. Lasher*);

NOW, THEREFORE, the said (*Thomas Lasher*) and (*Frank L. Lasher*;) as principals, do hereby bind themselves, their heirs, representatives and assigns, and the (*Manhattan Indemnity Company*;) as surety, does hereby bind itself, its successors and assigns, jointly and severally in the sum of (*ten thousand*) (\$10,000) dollars, lawful money of the United States to be well and truly paid to the (*City of Middletown, New York*;) or (*its*) certain attorney, successor or assigns; provided, however, that if the said (*Thomas Lasher*) and (*Frank L. Lasher*) shall well and truly and in a good and sufficient and workmanlike manner perform the said contract, and each and every provision therein contained on their part to be performed, and shall complete the same in accordance with the terms and conditions therein stipulated, this obligation is thereupon to become null and void, otherwise to remain in full force and effect.

WITNESS our hands and seals this (*tenth*) day of (*May*., 1905.)

(*THOMAS LASHER*;) (SEAL.)

(*FRANK L. LASHER*;) (SEAL.)

(*MANHATTAN INDEMNITY COMPANY*;))

By (*Thos. Saunders, Jr.*;))

(SEAL.)

(*Vice-President*;))

Attest:

(*FRANKLIN PIERSON*;))

(*Secretary*;))

(Acknowledgments.)

FORM No. 423.

Bond of Indemnity With Surety — Against a Claim for Personal Injuries.

KNOW ALL MEN BY THESE PRESENTS, that we, (*William P. Baird*) of (*the City of New York*;) principal, and (*the Surety Company of Maryland, having an office and principal place of business in the State of New York, at No. 35 Wall street, in the City of New York*;) surety, are held and firmly bound unto (*the*

Of Indemnity.

City of New York) in the certain sum of (*ten thousand*) (\$10,000) dollars, lawful money of the United States, to be paid to the said (*City of New York*) or its certain attorney, successors or assigns, for which payment well and truly to be made, the said (*William P. Baird*) binds himself, his heirs, executors and administrators, and (*the Surety Company of Maryland*) binds itself, its successors and assigns jointly and severally, firmly by these presents.

Dated the (*second*) day of (*February*, 1903.)

WHEREAS, the above-named (*William P. Baird* has been authorized by the Commissioner of Public Works of the City of New York to perform the work of making excavations and laying water mains therein in Fifth avenue, in said City of New York, upon certain agreed prices and upon certain agreed conditions;) and

WHEREAS, a claim has been filed against (*the City of New York*) by (*Thomas Kelly*) for (\$50,000) damages for personal injuries alleged to have been received by (*him*) on (*the 13th day of July*, 1902,) by (*falling into an unguarded and unlighted excavation in Fifth avenue, at Thirteenth street*;) and

WHEREAS, at the time the said injuries were received by the said (*Kelly*), as aforesaid, the said (*Baird, who had made the excavation complained of, was still engaged in the performance of his contract aforesaid*;))

NOW, THEREFORE, the condition of the above obligation is such that if the above-bounden (*William P. Baird*) and (*the Surety Company, of Maryland*), or either of them, shall pay and fully satisfy any judgment which may be obtained by the said (*Thomas Kelly*) against (*the City of New York*) for the personal injuries received by him as hereinbefore set forth, together with all costs and disbursements which may arise in such a suit, not exceeding the sum of (*ten thousand*) (\$10,000) dollars, then this obligation shall be void, otherwise to remain in full force and virtue.

(*WILLIAM P. BAIRD.*) [SEAL.]

(*SURETY COMPANY OF MARYLAND,*)

By (*Henry B. Place,*)

(*Vice-President.*)

Attest:

(*JOHN W. WOOD,*)

(SEAL.)

Secretary.

(Acknowledgments.)

Certificate Of Continuation Of Name.

Cass Ledyard, Jr.,) in pursuance of the statute in such case made and provided, do make and sign this certificate, and do declare that the persons intending to deal under such name, with their respective places of residence, are as follows:

(*Lewis Cass Ledyard,*) residing at (*No. 27 East Seventy-second Street,*) City of (*New York.*)

(*John G. Milburn,*) residing at (*No. 16 West Tenth Street,*) City of (*New York.*)

(*Edmund L. Baylies,*) residing at (*No. 20 West Thirty-sixth Street,*) City of (*New York.*)

(*George A. Miller,*) residing in the (*Town of Montclair,*) State of (*New Jersey.*)

(*Lewis Cass Ledyard, Jr.,*) residing at (*No. 64 East Seventy-third Street,*) City of (*New York.*)

Dated, (*New York, February 1, 1907.*)

(*LEWIS CASS LEDYARD.*)

(*JOHN G. MILBURN.*)

(*EDMUND L. BAYLIES.*)

(*GEORGE A. MILLER.*)

(*LEWIS CASS LEDYARD, JR.*)

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

On this (1st) day of (*February,*) in the year (*one thousand nine hundred and seven,*) before me personally came (*Lewis Cass Ledyard, John G. Milburn, Edmund L. Baylies, George A. Miller*) and (*Lewis Cass Ledyard, Jr.,*) to me known and known to me to be the individuals described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same.

(*JOSEPH W. WELSH,*)

Notary Public,

(*New York*) County.

Trade Name — Estoppel.

FORM No. 430.

**Certificate of Persons Doing Business Under Assumed Business Name
(Required by 363 B, Penal Code).**

STATE OF NEW YORK, }
County of (*New York*), } ss.:

WE DO HEREBY CERTIFY that the undersigned are conducting (or on and after this date intend to conduct), (*a garage for the storage and repair of motor vehicles*) and are transacting (or intend to transact) the business of (*storing, caring for and repairing and renting motor vehicles and selling supplies for same*), at (*No. 30 West 100th Street, in the Borough of Manhattan, City, County and State of New York*), under the name of ("*The Knickerbocker Garage*;") and that the true or real full name of each of the persons conducting or transacting such business with the post-office address of each of said persons is as follows:

(*Walter G. Johnson, 418 Central Park West, Manhattan, New York City.*)

(*Gordon Johnson, 20 West 77th street, Manhattan, New York City.*)

Dated, (*New York, May 15, 1905.*)

(*WALTER G. JOHNSON,*)
(*GORDON JOHNSON.*)

(Acknowledgment.)

FORM No. 431.

Estoppel Certificate.

I, (*Walter T. Rose*), residing at (*114 West 74th St., in the Borough of Manhattan, City of New York*), and owning premises situate in (*the Borough of Manhattan, City of New York, bounded and described as follows:.....*) which premises are covered by a mortgage for (*twenty-five hundred*) dollars, dated the (*twenty-sixth*) day of (*July, 1900*), recorded on the (*twenty-sixth*) day of (*July, 1900*), in the office of the (*Register*) of the County of (*New York*), in Liber (*103*) of Mortgages, page (*107*), in (*Section 4, block 1240*), which mortgage is about to be assigned by (*Margaret Kimble*), the holder to (*Edward H. Winkel*),

DO HEREBY CERTIFY, in consideration of the sum of one dollar paid, the receipt whereof is hereby acknowledged, and to

FORM No. 424.

Bond of Indemnity.

KNOW ALL MEN BY THESE PRESENTS, That (*William Conners*,) of (*the Borough of Manhattan, County and State of New York*,) is held and firmly bound unto (*Francis Keck*,) of (*Mount Vernon, Westchester County, New York*) in the penal sum of (*three thousand dollars*,) lawful money of the United States of America, to be paid to the said (*Francis Keck*,) his executors, administrators or assigns; for which payment, well and truly to be made (*I*) bind (*myself, my*) heirs, executors and administrators firmly by these presents. Sealed with (*my*) seal and dated the (*11th day of July*,) one thousand nine hundred and (*seven*.)

The condition of this obligation is such that should (*Eldridge Smith*,) well and truly pay to (*Francis Keck*,) on or before the (*first*) day of (*January, 1908*,) the full amount of a judgment for (*fourteen hundred and ninety-eight and 16/100 (1,498.16) dollars*,) which judgment was recovered by said (*Francis Keck*,) against the said (*Eldridge Smith*,) and filed and docketed in the office of the Clerk of the County of (*New York*) on the (*6th*) day of (*July, 1907*,) then the above obligation to be void, otherwise, to remain in full force and virtue.

(*WILLIAM CONNERS*,) [L. s.]

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On this (*11th*) day of (*July, 1907*,) before me personally came (*William Conners*,) to me known and known to me to be the person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

(*FRANK JOHNSON*,)

Notary Public,

(*New York*) County. (*No. 276*.)

CHATTEL MORTGAGE.

FORM No. 425.

Chattel Mortgage.

TO ALL TO WHOM THESE PRESENTS SHALL COME, know ye that (*I, Peter Smith,*) of (*the Borough of Manhattan, City, County and State of New York,*) of the first part, for securing the payment of the indebtedness hereinafter mentioned, in consideration of the sum of one dollar to (*me*) duly paid by (*Edward Jones and James Brown, both of the Borough of Brooklyn, in the said City of New York,*) of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said part(*ies*) of the second part, (*their*) executors, administrators, and assigns, (*all and singular the stock in trade, goods, materials and merchandise, fixtures, machines and appurtenances, books, book-accounts, notes, drafts and other evidences of debt,*) and all other goods and chattels mentioned in the schedule hereunto annexed, and now in the (*premises No. 16 Broad St., in the Borough of Manhattan, City of New York, together with all my right, title and interest under the lease to the said premises, and the good-will to the business now conducted by me therein.*)

TO HAVE AND TO HOLD, all and singular the goods and chattels above bargained, sold and conveyed, or intended so to be, unto the said part(*ies*) of the second part, (*their*) executors, administrators and assigns forever. And the said part(*y*) of the first part, for (*his*) heirs, executors and administrators, all and singular of the said goods and chattels above bargained, sold and conveyed, unto the said part(*ies*) of the second part, (*their*) executors, administrators and assigns, against (*me,*) the said part(*y*) of the first part, and against all and every person or persons whomsoever, shall and will warrant, and forever defend.

UPON CONDITION, that if (*I,*) the said part(*y*) of the first part, shall and do well and truly pay unto the said part(*ies*) of the second part, (*their*) executors, administrators or assigns, the sum of (*five hundred dollars, lawful money of the United States, within six months from the date hereof, with interest on said sum from the date hereof to the day of payment at five per centum per annum,*) then these presents shall be void, otherwise to remain in

Usual Form.

full force. And (*I*,) the said part(*y*) of the first part, for (*myself*) and (*my*) executors, administrators and assigns, do covenant and agree, to and with the said part(*ies*) of the second part, and (*their*) executors, administrators and assigns, that in case default shall be made in the payment of the said sum above mentioned, then it shall and may be lawful for, and (*I*,) the said part(*y*) of the first part, do hereby authorize and empower the said part(*ies*) of the second part, (*their*) executors, administrators and assigns, with the aid and assistance of any person or persons, to enter the dwelling-house, store and other premises, and such other place or places as the said goods or chattels are or may be placed, and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price (*they*) can obtain, and out of the money arising therefrom, to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any) unto (*me*) or to (*my*) executors, administrators or assigns. And until default be made in the payment of the said sum of money as aforesaid to remain and continue in the quiet and peaceable possession of the said goods and chattels and the full and free enjoyment of the same.

IN WITNESS WHEREOF, (*I*,) the said part(*y*) of the first part, have hereunto set (*my*) hand and seal the (*tenth*) day of (*March*,) one thousand nine hundred and (*five*.)

(*PETER SMITH.*) (SEAL.)

Sealed and delivered

in the presence of

(*OLIVER HUMPHREY.*)

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On this (*tenth*) day of (*March*,) in the year of our Lord one thousand nine hundred and (*five*,) before me, the undersigned, personally came and appeared (*Peter Smith*,) to me known and known to me to be the individual described in, and who executed the foregoing instrument, and (*he*) acknowledged to me that he executed the same.

(*WILSON WILLIAMS,*)

Notary Public,

(*N. Y.*) Co.

FORM No. 426.

Statement for Renewal of Chattel Mortgage.

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*The Childs Coal Company, a domestic corporation, having its office at No. 16 Wall street, in the Borough of Manhattan, New York City,*) does hereby certify that it is the owner and holder of a certain mortgage of personal property dated (*the second day of February, 1904,*) made by (*James Bell*) of (*the Borough of Manhattan, New York City,*) to (*the Childs Coal Company,*) aforesaid, to secure the payment of (*seven hundred dollars,*) filed on the (*fifth*) day of (*February, 1904,*) in the office of the (*Register*) of the County of (*New York;*) and that the interest of the mortgagee claimed by virtue of said mortgage is that it holds the same as security for the payment of (*five hundred*) dollars, with interest thereon from the (*first*) day of (*January, 1902.*)

Annexed hereto is a true copy of the aforesaid mortgage.

Dated, (*New York, February 2, 1905.*)

(*CHILDS COAL COMPANY,*)

(Seal.)

By (*Frank Childs,*)

(*Sec. and Treas.*)

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

On this (*2nd*) day of (*February,*) in the year one thousand nine hundred and (*five,*) before me personally came (*Frank Childs,*) with whom I am personally acquainted, who being by me duly sworn, said that he resided in (*the Borough of Manhattan, City of New York;*) that at the time of the execution of the aforesaid instrument he was the (*secretary and treasurer*) of (*the Childs Coal Company;*) that he knew the corporate seal of the (*Childs Coal Company;*) that the seal affixed to the foregoing instrument was such corporate seal; that it was so affixed by order of the board of directors of said (*Childs Coal Company,*) and that he signed his name thereto by like order as (*secretary and treasurer*) of said (*Childs Coal Company.*)

(*WARREN MAN,*)

Notary Public,

(*N. Y.*) Co.

Note On Renewal.

Renewal of Chattel Mortgage.

NOTE.

“Every mortgage * * * shall cease to be valid * * * after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of each and every term of one year after the filing of such mortgage, a statement * * * shall be again filed in the office of the clerk or register aforesaid of the town or city where the mortgagor shall reside, if he is then a resident of the town or city where the mortgage or a copy thereof was last filed; if not such resident, but a resident of the State, a true copy of such mortgage, together with such statement, shall be filed in the office of the clerk or register aforesaid, of the town or city where he shall then reside, and if not a resident of the State, then such statement shall be filed in the office of the clerk or register of the city where the property so mortgaged was at the time of the execution of said mortgage.”—Laws 1895, Chap. 354.

Mortgages creating a lien upon real and personal property, executed by a corporation as security for the payment of bonds issued by such corporation, or by any telegraph, telephone or electric light corporation, and recorded as a mortgage of real property in each county where such property is located or through which line of such telegraph, telephone or electric light corporation runs need not be filed or refiled as chattel mortgages. § 91 Lien Law, and see 102 *App. Div.* 465.

CERTIFICATES.

FORM No. 427.

Certificate of Formation of Limited Partnership.

(*Roger Lamson & Co.*) We, the undersigned, being desirous of forming a limited partnership, under and pursuant to the laws of the State of New York, do hereby certify:

First. The name or firm under which said partnership is to be conducted is ("*Roger Lamson & Co.,*") and the county wherein the principal place of business is to be located is the County of (*New York.*)

Second. The general nature of the business intended to be transacted by said partnership, is the business of (*general dry goods commission merchants.*)

Third. The names of the general and special partners interested in said partnership and business are (*Roger Lamson, Robert C. King, Robert Rogers and Frank L. Anthony,*) all of whom are of full age. The said (*Roger Lamson*) is a general partner and his place of residence is (*Larchmont,*) in the County of (*Westchester,*) and State of (*New York;*) the said (*Robert C. King*) is a general partner, and his place of residence is (*East Orange,*) in the County of (*Essex*) and State of (*New Jersey;*) the said (*Robert Rogers*) is a special partner and his place of residence is (*No. 48 East 61st street,*) in the (*Borough of Manhattan,*) in the (*City, County and*) State of (*New York,*) and the said (*Frank L. Anthony*) is a special partner and his place of residence is (*Larchmont,*) in the county of (*Westchester*) and State of (*New York.*)

Fourth. The amount of capital which the said (*Robert Rogers,*) one of the special partners, has contributed to the common stock of said partnership is (*fifty thousand*) (\$50,000) dollars.

Fifth. The amount of capital which the said (*Frank L. Anthony,*) one of the special partners has contributed to the common stock of said partnership is (*thirty thousand*) (\$30,000) dollars.

Sixth. The time at which said partnership is to begin is the (*first*) day of (*January, 1904*) and the time at which said partnership is to end is the (*thirty-first*) day of (*December, 1906.*)

Dated the (*2d*) day of (*January, 1904.*)

(*ROGER LAMSON,*) [SEAL.]

(*ROBERT C. KING,*) [SEAL.]

(*ROBERT ROGERS,*) [SEAL.]

(*FRANK L. ANTHONY.*) [SEAL.]

Certificate To Renew.

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

On this (2d) day of (*January*, 1904,) before me personally came (*Roger Lamson, Robert C. King, Robert Rogers and Frank L. Anthony*,) each to me known and known to me to be the same persons described in and who executed the foregoing instrument, and they severally duly acknowledged to me that they executed the same.

(*MAX COHEN*,)
 (Notarial Seal.) Notary Public (70) (*N. Y.*) Co.

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

(*Roger Lamson*,) being duly sworn, says: I am one of the general partners named in the foregoing certificate. The sum of (*fifty thousand*) dollars specified in the said certificate to have been contributed to the common stock of said partnership by (*Robert Rogers*,) one of the special partners, has been actually and in good faith paid in cash, and the sum of (*thirty thousand*) dollars specified in said certificate to have been contributed to the common stock of said partnership by (*Frank L. Anthony*,) one of the special partners, has been actually and in good faith paid in cash.

(*ROGER LAMSON*.)

Sworn to before me, this (2d) }
 day of (*January*, 1904.) }

(*MAX COHEN*,)
 (Notarial Seal.) Notary Public (70) (*N. Y.*) Co.

FORM No. 428.

Certificate to Renew Limited Partnership.

(*CHARLES G. GATES & CO.*)—Certificate of renewal of limited partnership (*Charles G. Gates & Co.*)

The undersigned hereby certify that the limited partnership, (*Charles G. Gates & Co.*,) heretofore formed by them pursuant to the laws of the State of (*New York*,) as set forth in a cer-

Certificate To Renew.

tificate thereof, dated (*January 19, 1906,*) and filed and recorded in the Clerk's office of the County of (*New York,*) on the (*19th*) day of (*January, 1906,*) the amounts of capital stock thereof contributed, held and owned by the special partners therein having thereafter increased, as set forth in a certificate of such increase dated (*March 1, 1906,*) and filed in the office of said Clerk of the County of (*New York,*) on said (*1st*) day of (*March, 1906,*) which said limited partnership, by the terms of the articles of copartnership of said firm and of said certificate of formation thereof, is to expire at the close of business on the (*28th*) day of (*February, 1907,*) is hereby renewed and continued as a limited partnership formed in compliance with the provisions of the laws of the State of (*New York;*) and

The undersigned hereby further certify as follows:

First. The name under which and the firm by which the said limited partnership when renewed and continued is to be conducted is (*Charles G. Gates & Co.*)

Second. The county wherein the principal place of business of said limited partnership when renewed and continued is to be located is the County of (*New York,*) in the State of (*New York.*)

Third. The general nature of the business intended to be transacted by said limited partnership when renewed and continued is dealing in stocks, bonds and other securities, grain, cotton, coffee, produce and other merchandise, and doing a general commission and brokerage business.

Fourth. The names of all the general and special partners interested in said limited partnership, and to be interested therein when renewed and continued, each of whom is of full age, and their respective places of residence, are as follows:

GENERAL PARTNERS.

(*Charles G. Gates,*) a general partner, who resides in the (*Borough of Manhattan, City, County and State of New York.*)

(*Arthur J. Singer,*) a general partner, who resides in the (*Borough of Manhattan, City, County and State of New York.*)

(*Charles G. Smith,*) a general partner, who resides in the (*Borough of Manhattan, City, County and State of New York.*)

(*Orson C. Wells,*) a general partner, who resides in the (*City of Chicago, County of Cook and State of Illinois.*)

Certificate To Renew.

(*Ramsay C. Bogy*,) a general partner, who resides in the (*Borough of Manhattan, City, County and State of New York.*)

(*Frank H. Hubbard*,) a general partner, who resides in the (*Borough of Manhattan, City, County and State of New York.*)

(*John B. Morrow*,) a general partner, who resides in the (*City of Chicago, County of Cook and State of Illinois.*)

(*Walter H. Dupee*,) a general partner, who resides in the (*City of Chicago, County of Cook and State of Illinois.*)

(*Melville D. Martin*,) a general partner, who resides in the (*Borough of Manhattan, City, County and State of New York.*)

SPECIAL PARTNERS.

(*John W. Gates*,) a special partner, who resides in the (*Borough of Manhattan, City, County and State of New York.*)

(*John Lambert*,) a special partner, who resides in the (*City of Joliet, County of Will, State of Illinois.*)

(*Frank E. Drake*,) a special partner, who resides in the (*City of Chicago, County of Cook, State of Illinois.*)

Fifth. The special partner (*John W. Gates*) has contributed to the common stock of capital of said limited partnership, the same to remain a part thereof until the expiration of the term of said limited partnership as hereby renewed and continued, the sum of (*one million*) dollars (\$1,000,000) in cash. The special partner (*John Lambert*) has contributed to the common stock of capital of said limited partnership, the same to remain a part thereof until the expiration of the term of said limited partnership as hereby renewed and continued, the sum of (*one hundred fifty thousand*) dollars (\$150,000) in cash. The special partner (*Frank E. Drake*) has contributed to the common stock of capital of said limited partnership, the same to remain a part thereof until the expiration of the term of said limited partnership as hereby renewed and continued, the sum of (*one hundred thousand*) dollars (\$100,000) in cash.

Sixth. The limited partnership began upon the (*first*) day of (*March*, 1906,) and the time at which the said partnership as renewed and continued is to end is at the close of business on the (*29th*) day of (*February*, 1908.)

Seventh. The said partnership shall be dissolved by the death of said general partner (*Charles G. Gates*,) but it shall not be dissolved by the death of any other partner. In the event of the

Certificate To Renew.

death of any partner, whether general or special, other than (*Charles G. Gates*,) the partnership may be continued by the survivors until the end of said partnership term.

Dated, (*December 7, 1906.*)

(<i>CHARLES G. GATES.</i>)	[SEAL.]
(<i>ARTHUR J. SINGER.</i>)	[SEAL.]
(<i>CHARLES G. SMITH.</i>)	[SEAL.]
(<i>ORSON C. WELLS.</i>)	[SEAL.]
(<i>RAMSAY C. BOGY.</i>)	[SEAL.]
(<i>FRANK H. HUBBARD.</i>)	[SEAL.]
(<i>JOHN B. MORROW.</i>)	[SEAL.]
(<i>WALTER H. DUPEE.</i>)	[SEAL.]
(<i>MELVILLE D. MARTIN.</i>)	[SEAL.]
(<i>JOHN W. GATES.</i>)	[SEAL.]
(<i>JOHN LAMBERT.</i>)	[SEAL.]
(<i>FRANK E. DRAKE.</i>)	[SEAL.]

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

I, (*Rutger B. Miller*,) a Notary Public of the State of (*New York*,) in and for the County of (*New York*,) wherein I reside and have my office, do hereby certify that (*John Lambert*,) to me personally known and known to me to be one of the persons described in and who executed the foregoing instrument, appeared before me this day in person, in the County of (*New York*,) and acknowledged that he made, signed, sealed and delivered the said instrument as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and official seal this (*7th*) day of (*December*, 1906.)

[Seal No. 99.]

[Signed.] (*RUTGER B. MILLER*,)
Notary Public (No. 99,)
(*New York*) County, (*N. Y.*)

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

I, (*Rutger B. Miller*,) a Notary Public of the State of (*New York*,) in and for the County of (*New York*,) wherein I reside and have my office, do hereby certify that (*Charles G. Gates*, *Arthur J. Singer*, *Charles G. Smith*, *Orson C. Wells*, *Ramsay C.*

Certificate To Renew.

Bogy, Frank H. Hubbard, Melville D. Martin and Charles W. Gates,) to me personally known and known to me to be eight of the persons described in and who executed the foregoing instrument, appeared before me this day in person, in the County of (*New York*,) and acknowledged that they and each of them acknowledged that he made, signed, sealed and delivered the said instrument as their and his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and official seal this (22d) day of (*December*, 1906.)

[Signed.] (RUTGER B. MILLER,)

Notary Public,

(*No. 99, New York*) Co. (*N. Y.*) .

(RUTGER B. MILLER,)

[SEAL.]

Notary Public,

(*New York*) County, (*No. 99.*)

STATE OF ILLINOIS, }
County of (*Cook*,) } ss.:

I, (*A. W. V. Eastburn*,) a Notary Public in the State of (*Illinois*,) in and for the County of (*Cook*,) wherein I reside and have my office, do hereby certify that (*John B. Morrow, Walter H. Dupee and Frank E. Drake*,) to me personally known and known to me to be three of the persons described in and who executed the foregoing instrument, appeared before me this day in person, in the County of (*Cook*,) State of (*Illinois*,) and acknowledged that they and each of them made, signed, sealed and delivered the said instrument as their and as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and official seal this (31st) day of (*December*, 1906.)

[Signed] (*A. W. V. EASTBURN*),

Notary Public,

(*Cook*) County, (*Illinois*.)

(*A. W. V. EASTBURN*),

[NOTARIAL SEAL.]

(*Cook*) County, (*Illinois*.)

[Attached Slip.]

CLERK'S OFFICE, }
County of (*New York*,) } ss.:

Let the terms of the foregoing limited partnership be published once a week for six successive weeks in the (*New York Law*

Certificate Of Continuation Of Name.

Journal and Hebrew Standard,) two papers published and having a circulation in the County of (*New York*.)

Dated, (*New York, 16th January, 1907*.)

[Signed.] (*PETER J. DOOLING*),

[*NEW YORK SEAL*.]

Clerk.

[Attached Slip.]

STATE OF ILLINOIS, }
(*Cook*) County, } ss.:

I, (*Joseph F. Haas*), County Clerk in and for the County of (*Cook*), do here certify that I am the keeper of the records and seal of said county; that I am the lawful custodian of the official record of notaries public, justices of the peace and constables of said county; that (*A. W. V. Eastburn*), Esq., is a Notary Public in said county, duly commissioned and sworn, and whose acts as such are entitled to credit; that his commission bears date of (*October 31, A. D., 1906*), and will expire (*October 31, A. D., 1910*.)

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of the County of (*Cook*), at my office in the City of (*Chicago*), in the said County, this (31st) day of (*December, 1906*.)

[Signed.] (*JOSEPH F. HAAS*),

County Clerk,

[SEAL.] of the County of *Cook, Illinois, March, 1831*,
Virtus sola invicta.]

FORM No. 429.

Certificate of Continuation of Partnership Name.

(*Carter, Ledyard & Milburn*), — Know All Men by these Presents:

WHEREAS the business of the firm of (*Carter, Ledyard & Milburn*), a firm having business relations with foreign countries, continues to be conducted by some of the partners therein, to wit, by (*Lewis Cass Ledyard, John G. Milburn, Edmund L. Baylies and George A. Miller*), who were partners in such firm.

NOW, THEREFORE, the undersigned, the said (*Lewis Cass Ledyard, John G. Milburn, Edmund L. Baylies and George A. Miller*), who were partners in said firm, together with (*Lewis*

Protest.

induce said assignment to be accepted, that said mortgage so to be assigned is a valid (*first*) lien on said premises for the full amount of principal and interest due thereon, namely (*twenty-five hundred*) dollars, and interest at (*five*) per cent. per annum from the (*fifteenth*) day of (*April*, 1901,) and that there are no defenses or offsets to said mortgage, or to the bond which it secures, and that all the other provisions of said bond and mortgage are in force and effect.

IN WITNESS WHEREOF, I have hereto set my hand and seal this (*fifteenth*) day of (*April*,) one thousand nine hundred and (*one*.)

(WALTER T. ROSE.) [SEAL.]

In the presence of

(MEYER VAN DAM.)

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On this (*fifteenth*) day of (*April*,) in the year one thousand nine hundred and (*one*,) before me personally came (*Walter T. Rose*,) to me known and known to me to be the individual described in, and who executed the foregoing instrument, and (*he*) acknowledges that he executed the same.

(MAX BENSON,)

Notary Public,
(*N. Y.*) Co.

FORM No. 432.

Certificate of Protest.

\$750.00.

Troy, N. Y., December 10, 1904.

UNION NATIONAL BANK pay to *John Drexel*, or order, *seven hundred and fifty* (\$750) dollars.

WILLIAM FRYE.]

STATE OF NEW YORK, }
County of (*Rensselaer*,) } ss.:

On the (*twenty-first*) day of (*December*, 1904,) at the request of (*John Drexel*,) I, (*Joseph Kernan*,) a Notary Public of the State of (*New York*,) duly commissioned and sworn, and residing in (*Rensselaer*) County, did present the original check hereunto annexed, to (*the Union National Bank of Troy, New York*,) at

Protest.

(*Troy, N. Y.*,) and demanded payment thereof, which was refused, upon the ground that the drawer had not sufficient funds in his account to meet said check.

WHEREUPON, I, the said notary, at the request aforesaid, did protest and by these presents do publicly and solemnly protest, as well against the drawer and indorser of the said check as against all others whom it doth or may concern, for exchange, re-exchange and all costs, damages and interest already incurred, and to be hereafter incurred for want of payment of the same.

Thus done and protested in the (*City of Troy, County of Rensselaer*) aforesaid, in the presence of

(*JOHN DOE* and *RICHARD ROE*,)

Witnesses.

IN TESTIMONIUM VERITATIS.

(*JOSEPH KERNAN*,)

Notary Public.

STATE OF NEW YORK, }
County of (*Rensselaer*,) } ss.:

I, (*Joseph Kernan*,) a Notary Public of the State of (*New York*,) duly commissioned and sworn, do hereby certify, that on the (*twenty-first*) day of (*December*,) one thousand nine hundred and (*four*,) due notice of the presentment and protest of the said check after demand and refusal of payment thereof, by notice, partly written and partly printed, signed by me, was given by me to the drawer and the respective indorsers of the said instrument, by depositing the same in the post-office at (*Troy, N. Y.*) (pre-paying the postage thereon), duly directed and superscribed to said drawer and indorsers, as follows, to-wit:

To

(*William Frye* at 689 River street, *Troy, N. Y.*)

(*John Fox*, at 165 First street, *Troy, N. Y.*)

(*Charles Collins*, at 30 Pawling avenue, *Troy, N. Y.*)

The above named places being the reputed places of residence of the persons to whom such notice was so addressed, and the post-office nearest thereto.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at (*the City of Troy*,) county of (*Rensselaer*,) and State of (*New York*,)

(*JOSEPH KERNAN*,)

Notary Public.

DEEDS.*

FORM No. 433.

Short Form Warranty Deed.

THIS INDENTURE, made the (*twenty-ninth*) day of (*November*,) in the year one thousand nine hundred and (*four*,) between (*Wesley Thom*,) of (*Plainfield, New Jersey*) (*unmarried*), part(*y*) of the first part, and (*Frank P. Holman*,) of (*the Borough of Brooklyn, City of New York*,) part(*y*) of the second part:

WITNESSETH, that the said part(*y*) of the first part, in consideration of the sum of (*one hundred*) (\$100.00) dollars, lawful money of the United States, paid by the part(*y*) of the second part, do(*es*) hereby grant and release unto the said part(*y*) of the second part, (*his*) heirs and assigns forever, all that certain parcel of land situate, lying and being in (*the Borough of Brooklyn, City of New York*,) bounded and described as follows:

(Description.)

Together with the appurtenances, and all the estate and rights of the said part(*y*) of the first part, in and to said premises, to have and to hold the above-granted premises unto the said part(*y*) of the second part, (*his*) heirs and assigns forever.

And the said (*Wesley Thom*,) part(*y*) of the first part, does covenant with the said part(*y*) of the second part as follows:

First. That the said (*Wesley Thom*,) the part(*y*) of the first part, is seized of the said premises in fee simple, and has good right to convey the same.

Second. That the part(*y*) of the second part shall quietly enjoy the said premises.

Third. That the said premises are free from incumbrances.

Fourth. That the part(*y*) of the first part will execute or procure any further necessary assurance of the title to said premises.

Fifth. That the part(*y*) of the first part will forever warrant the title to said premises.

IN WITNESS WHEREOF, the said part(*y*) of the first part has hereunto set (*his hand*) and (*seal*) the day and year first above written.

(*WESLEY THOM.*) [SEAL.]

In the presence of
(*HENRY A. MARK.*)

Quitclaim.

STATE OF NEW YORK, }
 County of (*New York*,) } ss.:

On the (*29th*) day of (*November*,) in the year one thousand nine hundred and (*four*,) before me personally came (*Wesley Thom*,) to me known and known to me to be the individual described, and who executed the foregoing instrument, and (*he*) duly acknowledged to me that (*he*) executed the same.

(*WESTON ANDERSON*,)

Notary Public,
 (*N. Y.*) Co.

FORM No. 434.

Quitclaim Deed.

THIS INDENTURE, made the (*fourth*) day of (*May*,) in the year one thousand nine hundred and (*four*,) between (*W. Stanley Baker*,) of (*the Borough of Manhattan, City of New York*,) part(*y*) of the first part, and (*Conrad Kruse*,) of (*the same place*,) part(*y*) of the second part:

WITNESSETH, that the said part(*y*) of the first part, for and in consideration of the sum of (*one hundred*) dollars, lawful money of the United States, paid by the said part(*y*) of the second part, does hereby remise, release and forever quitclaim unto the said part(*y*) of the second part, (*his*) heirs and assigns forever, all (*his right, title and interest in, of and to a certain parcel or tract of land situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:*)

(Description.)

Together with the appurtenances and all the estate and rights of the said part(*y*) of the first part, in and to the said premises. To have and to hold the above granted, bargained and described premises, unto the said part(*y*) of the second part, (*his*) heirs and assigns, for ever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set (*his hand*) and (*seal*) the day and year first above written.

(*W. STANLEY BAKER*.) [SEAL.]

In the presence of
 (*ANNA BELL*.)

Referee In Foreclosure.

STATE OF *NEW YORK*, }
County of *New York*, } ss.:

On this (*fourth*) day of (*May*), in the year one thousand nine hundred and (*four*), before me personally came (*W. Stanley Baker*), to me known, and known to me to be the individual described in and who executed the foregoing instrument, and (*he*) thereupon acknowledged to me that (*he*) executed the same.

(*ROBERT BACON*),

Notary Public,
(*New York*) County.

FORM No. 435.

Referee's Deed on Foreclosure.

THIS INDENTURE, made the (*5th*) day of (*September*), in the year one thousand nine hundred and (*six*), between (*James J. Maxwell*), the referee duly appointed in the action hereinafter mentioned, of the first part and (*Frederick Bower*), party of the second part.

WHEREAS, at a special term of the Supreme Court of the State of New York held in and for the county of (*New York*), on the (*seventeenth*) day of (*July*), one thousand nine hundred and (*six*), it was, among other things, ordered, adjudged and decreed by the said court, in a certain action then pending in the said court between (*Emily H. Moir, as surviving trustee for Johannah S. Seymour, under deed of trust dated October 3rd, 1888*), plaintiff, against (*Rose Flood, individually and as temporary administratrix of the estate of Michael Cain, deceased*), and others, defendants. That all the singular the mortgaged premises described in a mortgage executed by (*Michael Cain, widower*), to (*Johannah S. Seymour*), dated (*May 29th, 1904*), and recorded in the office of the (*Register of the City and County of New York*), on (*May 31, 1904*), in (*Section 3*), Liber (*30*) of Mortgages at page (*199*), and being the same premises mentioned in the complaint in said action, and in said judgment described, or such part thereof as might be sufficient to discharge the mortgage debt, the expenses of the sale and costs in said action, and which might be sold separately, without material injury to

Referee In Foreclosure.

the parties interested, be sold at public auction according to law and the course and practice of said court, by or under the direction of the said party of the first part as referee thereby duly appointed for that purpose; that the said sale be made in the county where the said mortgaged premises, or the greater part thereof, are situated; that the said referee give due public notice of the time and place of such sale, according to law and the course and practice of said court, and that any of the parties to the said action might become a purchaser or purchasers on such sale; that the said referee execute to the purchaser or purchasers of the said mortgaged premises, or such part or parts thereof as should be sold, a good and sufficient deed or deeds of conveyance for the same, and pay all taxes, assessments or water rates, which were liens upon the property sold.

AND WHEREAS, the said referee, in pursuance of the said order and judgment of the said court did on the (*twenty-second*) day of (*August*), one thousand nine hundred and (*six*), sell at public auction at the (*New York real estate salesroom, No. 14 and 16 Vesey street*), in the (*Borough of Manhattan, City of New York*), the premises described in the said judgment, due notice of the time and place of such sale being first given, pursuant to the said judgment at which sale the premises herein-after described were struck off to (*Frederick Bower*) for the sum of (*nine thousand one hundred and fifty*) (\$9,150) dollars, that being the highest sum bidden for the same.

Now this Indenture Witnesseth, that the said referee, the party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid, in pursuance of the order and judgment of the said court, and in conformity to the statute in such case made and provided, and also in consideration of the premises, and of the said sum of money so bidden as aforesaid being first duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth grant and convey unto the said party of the second part, and to his heirs and assigns forever, all that certain lot of land, with the buildings and improvements thereon, situate, lying and being

(Description.)

To have and to hold all and singular the premises above mentioned and described, and hereby conveyed, or intended so to be,

Referee In Foreclosure.

unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof, forever.

IN WITNESS WHEREOF, the said (*James J. Maxwell*), referee as aforesaid, hath hereunto set his hand and seal, the day and year first above written.

(*JAMES J. MAXWELL.*) (SEAL.)

Sealed and delivered
in the presence of

.....

STATE OF *NEW YORK*, }
County of *New York*, } ss.:

On the (*fifth*) day of (*September*), in the year one thousand nine hundred and (*six*), before me personally came (*James J. Maxwell*), to me known, and known to me to be the individual described in, and who executed the foregoing instrument, who acknowledged that he executed the same.

(*GEORGE THOMPSON*),

Notary Public,
(*New York*) County.

Agreement.

FORM No. 436.

Mortgage (Extension Agreement).

AGREEMENT, made this (*tenth*) day of (*March*, 1904,) between (*Margaret Gallagher*,) of (*Saratoga Springs, Saratoga County, State of New York*,) part(*y*) of the first part, and (*Herman Jacobus*,) of (*the Borough of Manhattan, City and State of New York*,) part(*y*) of the second part, witnesseth:

WHEREAS, the part(*y*) of the first part is the owner and holder of a certain bond and mortgage made to secure the payment of the sum of (*seventeen thousand*) (\$17,000.00) dollars and interest executed by (*John G. Morris and wife*) to (*Eliza McLaughlin, of Saratoga Springs, New York*,) and covering certain premises in the (*Borough of Manhattan, City of New York*,) known as (*No. 225 Seventh Avenue, New York City*,) which mortgage was recorded in the office of the (*Register*) of the County of (*New York*,) on the (*15th*) day of (*April*, 1897,) in (*Block Series (Mortgages, Section 3,*) liber (56,) page (241,) and indexed under (*Block Number 800*,) on the Land Map of the (*City of New York*, and assigned to the party of the first part by assignment bearing date June 2, 1903, recorded in Liber 154, page 14,) and upon which bond and mortgage there is now due the sum of (*seventeen thousand*) (\$17,000.00) dollars, with interest thereon from the (*tenth*) day of (*October*, 1903,) at the rate of (*five*) (5) per cent. per annum,

AND WHEREAS the said part(*y*) of the first part is now the owner of the said bond and mortgage, and the part(*y*) of the second part is the owner of the premises upon which the said mortgage is a lien and has requested that the time of the payment of the said principal sum of (*seventeen thousand*) (\$17,000) dollars secured to be paid thereby be extended for (*three years*) from the date of (*April 11*, 1904;)

AND WHEREAS the parties hereto are desirous of extending the time of payment of the said bond and mortgage upon the terms hereinafter mentioned;

NOW IN CONSIDERATION of the premises and of the mutual promises herein contained, and of the sum of (*one dollar*) duly paid to the said part(*y*) of the first part by the part(*y*) of the second part it is hereby mutually covenanted and agreed by and

Agreement.

between the parties that the time for the payment of the said sum of (*seventeen thousand*) (\$17,000.00) dollars, the principal now due on the said bond and mortgage, be and the same is hereby extended for the further term of (*three years*) from the (*tenth*) day of (*April*, 1904,) to the (*10th*) of (*April*) nineteen hundred and (*seven*.)

PROVIDED THAT the part(*y*) of the second part pay the interest on said bond and mortgage at said rate of (*five*) (5) per cent. per annum, semi-annually, on the (*last*) days of (*June*) and (*December, respectively,*) in each year until said principal sum shall be fully paid, and also pay all taxes, water rates and insurance or assessments when due, and also comply with all the terms and conditions set forth in said bond and mortgage, as herein modified (and enlarged).

And the part(*y*) of the second part further covenants and agrees to accept the said extension upon the conditions hereinbefore expressed.

(And the party of the second part further covenants and agrees that he the said, now owns the premises described in said mortgage and the party of the second part agrees to the extension of the payment of said principal sum as hereinbefore set forth, and does hereby promise and bind himself, his heirs, legal representatives and assigns, to pay said principal sum and interest as above set forth, and to comply with the other terms and conditions of the said bond and mortgage.)

(Nothing herein contained shall invalidate any of the security now held for the said debt nor impair any condition in said bond and mortgage.)

(This agreement shall bind the parties, their heirs, legal representatives and assigns.)

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

(MARGARET GALLAGHER,) (SEAL.)
(HERMAN JACOBUS.) (SEAL.)

In the presence of

.....

STATE OF NEW YORK, }
County of (*Saratoga*), } ss.:

On this (*eleventh*) day of (*March*), in the year of our Lord one thousand nine hundred and (*four*), before me the undersigned,

Agreement.

personally came and appeared, (*Margaret Gallagher and Herman Jacobus,*) to me personally known and known to me to be the individuals described in and who executed the foregoing instrument, and they (*severally*) acknowledged to me that they executed the same.

(AARON ARMSTRONG,)

Notary Public,

(*Saratoga*) County.

GENERAL ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

NOTE.

In this connection it is necessary to bear in mind that the assent of all insurers against fire on the property assigned should be obtained and indorsed on the policy.

FORM No. 437.

General Assignment — By Individual, Without Preferences.

THIS INDENTURE, made the (*third*) day of (*April*), in the year one thousand nine hundred and (*five*), between (*James Lyman*), residing at (*No. 124 Washington avenue, in the Borough of Brooklyn, City of New York, in the State of New York*), and carrying on the business of (*importing silks*) at (*No. 25 Greene street, in the Borough of Manhattan, in said City of New York*), party of the first part, and (*Robert Johnson, of the Borough of Manhattan, City of New York, in the State of New York*), party of the second part, witnesseth:

THAT WHEREAS, the party of the first part is indebted to divers persons in sundry sums of money which he is unable to pay in full, and is desirous of providing for the payment of the same so far as it is in his power by an assignment of all his property for that purpose;

NOW, THEREFORE, the said party of the first part, in consideration of the premises and of (*one dollar*) paid by the party of the second part upon the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto the party of the second part, his successors and assigns, all and singular the lands, tenements, hereditaments and appurtenances, goods, chattels, stocks, promissory notes, claims, demands, property and effects of every description belonging to the party of the first part, wherever the same may be, *except* such property as is by law exempt from levy and sale under an execution.

To have and to hold the same and every part thereof in trust for the uses and purposes following:

To take possession of the said property, and to sell the same with all reasonable dispatch and to convert the same into money, and

By Individual.

also to collect all such debts and demands hereby assigned as may be collectible, and out of the proceeds of such sales and collections:

1. To pay and discharge all the just and reasonable expenses, costs and charges of executing this assignment, and of carrying into effect the trust hereby created, together with the lawful commissions of the party of the second part for his services in executing said trust.

2. To pay and discharge in full, if the residue of said proceeds is sufficient for that purpose, all the debts and liabilities now due, or to become due of said party of the first part, with all the interest moneys due or to become due thereon; and if the residue of said proceeds shall not be sufficient to pay all the said debts, liabilities and interest moneys in full, then to apply the said residue of said proceeds to the payment of said debts and liabilities ratably and in proportion.

And if, after the payment of all the costs, charges and expenses attending the execution of the said trust and the payment of all the said debts and liabilities in full there shall be any remainder or residue of said property or proceeds to repay and return the same to the said party of the first part, his executors, administrators and assigns.

And for the better and more effectual execution of these presents and of the trusts hereby created, the party of the first part does hereby make, constitute and appoint the party of the second part his true and lawful attorney, irrevocable with full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trust hereby created, and to ask, demand, recover and receive of and from all, and every person or persons, all property debts and demands, due, owing and belonging to said party of the first part, and to give acquittances and discharges for the same; to sue, prosecute, defend and implead for the same, and execute, acknowledge and deliver all necessary deeds, instruments and conveyances necessary or proper for the better execution of the trust hereby created; (and for any of the purposes aforesaid to make, constitute and appoint one or more attorneys under him and at his pleasure to revoke the said appointments, hereby ratifying and confirming whatever the said party of the second part or his substitute shall lawfully do in the premises).

And the said party of the first part hereby authorizes the said party of the second part to sign the name of the said party of the

By Corporation.

first part to any check, draft, promissory note or other instrument in writing, which is payable to the order of the said party of the first part, or to sign the name of the party of the first part to any instrument in writing whenever it shall be necessary so to do to carry into effect the object, design and purpose of this trust.

And the party of the second part does hereby accept the trust created and reposed in him by these presents and does covenant and agree with the party of the first part that he will faithfully and without delay execute the said trust according to the best of his skill, knowledge and ability.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

(JAMES LYMAN,) (SEAL.)
(ROBERT JOHNSON.) (SEAL.)

STATE OF NEW YORK, }
County of (New York,) } ss.:

On this (3rd) day of (April,) in the year one thousand nine hundred and (five,) before me personally came (James Lyman) and (Robert Johnson,) to me known and known to me to be the individuals described in and who executed the foregoing instrument and severally acknowledged that they executed the same.

(BURT FOX,)
Notary Public,
(N. Y.) County.

FORM No. 438.

General Assignment — By Corporation, without Preferences.

THIS INDENTURE, made the (tenth) day of (April,) in the year one thousand nine hundred and (five,) between (Cameron & Dodge,) a corporation created and organized by and under the laws of the State of (New York,) located and carrying on the business of (importing and selling diamonds, watches, jewelry and art goods, at No. 50 5th avenue, in the Borough of Manhattan, City of New York,) party of the first part, and (Benjamin Anderson,) of (the same place,) party of the second part, witnesseth, that

By Corporation.

WHEREAS, the said party of the first part is justly indebted to sundry persons in divers and sundry sums of money, and being unable to pay the same in full, is desirous of applying all the property and assets of the said corporation to the payment of its debts;

NOW, THEREFORE, the said party of the first part, in consideration of the premises and of one dollar paid by the party of the second part upon the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over, unto the party of the second part, his successors and assigns, all and singular the estate and property, real and personal, of every kind and nature, and wheresoever the same may be, of said party of the first part which is now held or owned by it as aforesaid.

TO HAVE AND TO HOLD the same and every part and parcel thereof, with the appurtenances, unto the party of the second part, his successors and assigns.

IN TRUST, NEVERTHELESS, for the following uses and purposes:

1. To receive and take possession of all and singular the estate and property above assigned, transferred and conveyed, or intended so to be, and to collect and get in all bills, promissory notes, accounts, choses in action, claims, demands and moneys due or owing the said party of the first part, and with all reasonable diligence to sell and dispose of the real and personal property hereinbefore conveyed and assigned, and convert the said assigned property and estate into money.

2. And out of the proceeds to pay and discharge all the just and reasonable expenses, costs and charges of executing this assignment and of carrying into effect the trust hereby created, together with the lawful commissions of the party of the second part for his services in executing said trust.

3. Then to pay and discharge in full, if the residue of said proceeds shall be sufficient for that purpose, all the debts and liabilities now due or to grow due from said party of the first part with all interest moneys due or to grow due thereon and if the same shall be not sufficient to pay the said debts and liabilities and interest moneys in full, then the said party of the second part shall apply the same to and in payment of the said debts and liabilities ratably and in proportion to the respective amounts thereof.

By Corporation.

4. And if after the payment of all the costs, charges and expenses attending the execution of the said trust and the payment of all the said debts and liabilities in full there shall be any remainder or residue of said property or proceeds, to pay and return the same to the party of the first part, its legal representatives and assigns, according to their respective rights thereto.

And for the better and more effectual execution of these presents and of the trusts hereby created, the party of the first part does hereby make, constitute and appoint the party of the second part its true and lawful attorney irrevocable with full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trust hereby created, and to ask, demand, recover and receive of and from all, and every person or persons all property, debts and demands due, owing and belonging to said party of the first part, and to give acquittances and discharges for the same; to sue, prosecute, defend and implead for the same, and to execute, acknowledge and deliver all necessary deeds, instruments and conveyances.

And that said party of the first part does hereby authorize the said party of the second part to sign or indorse their names or the corporate name of the party of the first part to or upon any check, draft, promissory note, or other instrument in writing for the payment of money which is payable to the order of the party of the first part in its corporate name, or otherwise, and to sign its name or the said corporate name to any instrument in writing of any name, kind or nature, which may be necessary to more fully carry into effect the object, design and purpose of this trust.

And the party of the second part does hereby accept the trust created and reposed in him by these presents, and does covenant and agree with the party of the first part that he will faithfully and without delay execute the said trust according to the best of his skill, knowledge and ability.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

(CAMERON & DODGE,) [L. s.]

[Corporate Seal.]

By (Chas. P. Dodge,)

President.

(DAVID EVANSON,)

Secy.

(BENJAMIN ANDERSON.) [L. s.]

By Partnership.

STATE OF NEW YORK, }
 County of (New York,) } ss.:

On this (*tenth*) day of (*April*, 1905,) before me personally appeared (*David Evanson*,) with whom I am personally acquainted, who being by me duly sworn, said: That he resides in the State of (*New York*;) that he is the (*secretary*) of (*Cameron & Dodge*,) the corporation described in and which executed the above instrument; that he knows the corporate seal of the said corporation; that the seal affixed to the above instrument is such seal; that it was so affixed by the order of the board of directors of said corporation; and that he signed his name thereto as (*secretary*) by like authority

And the said (*David Evanson*) further says that he is acquainted with (*Charles P. Dodge*,) and knows him to be the (*president*) of the said corporation; that the signature of the said (*Charles P. Dodge*) subscribed to the above instrument is in the genuine handwriting of the said (*Charles P. Dodge*,) and was thereto subscribed by the like order of said board of directors in the presence of him, the said (*David Evanson*.)

(*BURT LARNED*),

Notary Public,

(*New York*) County.

STATE OF NEW YORK, }
 County of (New York,) } ss.:

On this (*tenth*) day of (*April*, 1905,) before me personally appeared (*Benjamin Anderson*,) to me personally known and known to me to be the individual described in and who executed the foregoing instrument, and (*he*) acknowledged to me that he executed the same.

(*BURT LARNED*),

Notary Public,

(*New York*) Co.

FORM No. 439.

General Assignment — By Partnership, of Firm and Individual Property, Without Preferences.

THIS INDENTURE, made the (*10th*) day of (*April*), in the year one thousand nine hundred and (*five*), between (*Russell Lowell*), residing at (*16 East 67th street, in the Borough of Man-*

By Partnership.

hattan, City of New York; John Arts,) residing at (654 *Madison Avenue, in the same Borough and City;*) and (*Charles Simmons,* residing at (*Mamaroneck, Westchester County, New York,*) carrying on the business of (*Manufacturing and selling linen collars and cuffs,*) at (*the City of Troy, in the State of New York,*) under the firm name of (*Lowell, Arts & Company,*) parties of the first part, and (*Roger Williams,*) of the said (*City of Troy,*) party of the second part, witnesseth, that

WHEREAS, the said parties of the first part are justly indebted as copartners to sundry persons in divers and sundry sums of money, and being unable to pay the same in full are desirous of applying all the copartnership and their individual property and assets to the payment of their copartnership and individual debts:

NOW, THEREFORE, the said parties of the first part, in consideration of the premises and of one dollar paid by the party of the second part upon the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the party of the second part, his successors and assigns, all and singular the estate and property, real and personal, of every kind and nature and wheresoever the same may be, of said parties of the first part, which is now held or owned by them as such copartnership firm, as aforesaid,

TO HAVE AND TO HOLD the same and every part and parcel thereof, with the appurtenances, unto the party of the second part, his successors and assigns,

IN TRUST, NEVERTHELESS, for the following uses and purposes:

1. To receive and take possession of all and singular the estate and property above assigned, transferred and conveyed, or intended to be, and to collect and get in all bills, promissory notes, accounts, choses in action, claims, demands and moneys due or owing the said parties of the first part as such copartnership firm, and with all reasonable diligence to sell and dispose of the real and personal property hereinbefore conveyed and assigned, and convert the said assigned property and estate into money.

2. And out of the proceeds to pay and discharge all the just and reasonable expenses, costs and charges of executing this assignment and of carrying into effect the trust hereby created, to-

By Partnership.

gether with the lawful commissions of the party of the second part for his services **in** executing said trust.

3. And out of the residue of said proceeds to pay and discharge in full all and singular the debts and liabilities now due or to become due of the parties of the first part as such copartnership, with lawful costs and interest, if the residue of said proceeds applicable thereto shall be sufficient for that purpose; and if the same be not sufficient, then the said party of the second part shall apply such residue of said proceeds to the payment of said debts and liabilities in proportion to the respective amounts thereof.

4. With and out of the residue and remainder of the said proceeds, if any there shall remain after paying all the debts and liabilities of the parties of the first part as such copartnership, the party of the second part is directed to pay and discharge all the private and individual debts of the parties of the first part, or any of them, whether due or to grow due, provided the amount of the individual debts of each of the said parties of the first part does not exceed the portion of any surplus which may remain after paying all the copartnership debts as aforesaid to which he may be entitled; and if the amount of the individual debts of any of the parties of the first part should exceed his interest in the said surplus, then his said interest is to be divided *pro rata* amongst his individual creditors in proportion to the amounts of their respective demands, it being understood that no part of the said surplus to which any of the parties of the first part may be respectively entitled after the payment of the copartnership debts as aforesaid is to be made liable for the individual debts of any of the other parties of the first part; and

WHEREAS, the said parties of the first part are individually justly indebted to sundry persons in divers and sundry sums and are respectively unable to pay the same in full, and are respectively desirous of making an equitable distribution of their property and effects amongst their creditors:

NOW, THEREFORE, the said parties of the first part, in consideration of the premises and of one dollar to each of them in hand paid by the party of the second part upon the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have each granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the party of the second part, his suc-

By Partnership.

cessors and assigns, all and singular the estate and property, real and personal, of every kind and nature, and wheresoever the same may be of each of the said parties of the first part which is now held or owned by them as their separate and individual property or estate.

TO HAVE AND TO HOLD the same and every part and parcel thereof, with the appurtenances, unto the party of the second part, his successors and assigns, in trust, nevertheless, for the following uses and purposes:

5. To receive and take possession of all and singular the estate and property last above assigned and conveyed, or intended so to be, and to collect and get in all bills, promissory notes, accounts, choses in action, claims, demands and moneys due or owing to the said parties of the first part as individuals, and with reasonable diligence to sell and dispose of the real and personal property last hereinbefore conveyed and assigned, and convert the said assigned property and estate into money.

6. And out of the proceeds to pay and discharge all the just and reasonable expenses, costs and charges, of executing this assignment and carrying into effect the trust hereby created, together with the lawful commissions of the party of the second part for his services in executing said trust.

7. And out of the residue of the said individual estates and property, and proceeds thereof, the party of the second part is directed to pay and discharge all the private and individual debts of the parties of the first part, or any of them, whether due or to grow due, as follows:

To apply the proceeds of the estate and property of each of the said parties of the first part to the payment of the individual debts of each of the parties of the first part so that no part of the individual property or estate of the parties of the first part shall be devoted to the payment of the individual debts of any of the other parties of the first part; and if the residue of said proceeds of the individual estate and property of the parties of the first part, or any of them, shall not be sufficient to pay all the individual debts and liabilities of the said parties or party, with lawful costs and interest, as hereinbefore provided, then to apply the said residue of said proceeds to the payment of the said debts and liabilities ratably and in proportion to the respective amounts thereof. And if the individual property of the parties of the first part, or any of them, shall be more than sufficient to pay their respective in-

By Partnership.

dividual debts and liabilities, then to apply any surplus that may remain to the payment and liquidation of any balance of the copartnership debts which may remain unpaid out of the proceeds of the copartnership property hereinbefore assigned; said surplus to be applied to the payment and liquidation of the said copartnership debts as hereinbefore provided.

8. And if, after the payment of all the costs, charges and expenses attending the execution of the trusts herein created and the payment of all the debts and liabilities of the said parties of the first part as such copartnership and as individuals, in full, there shall be any remainder or residue of the proceeds or property hereinbefore assigned, to pay and return the same to the parties of the first part, their executors, administrators and assigns, according to their respective rights thereto.

And for the better and more effectual execution of these presents and of the trusts hereby created, the parties of the first part do hereby make, constitute and appoint the party of the second part their true and lawful attorney irrevocable, with full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trusts hereby created, and to ask, demand, recover and receive of and from all and every person or persons all property, debts and demands due, owing and belonging to said parties of the first part, or each or any, and to give acquittances and discharges for the same; to sue, prosecute, defend and implead for the same, and to execute, acknowledge and deliver all necessary deeds, instruments and conveyances.

And the said parties of the first part do hereby authorize the said party of the second part to sign or indorse their names or the copartnership name of the parties of the first part to or upon any check, draft, promissory note, or other instrument in writing for the payment of money which is payable to the order of the parties of the first part in their copartnership name, or otherwise, and to sign their names or the said copartnership name to any instrument in writing of any name, kind or nature, which may be necessary to more fully carry into effect the object, design and purpose of this trust.

And the party of the second part does hereby accept the trust created and reposed in him by these presents, and does covenant and agree with the parties of the first part that he will faithfully and without delay execute the said trust according to the best of his skill, knowledge and ability.

 By Partnership.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

(*RUSSELL LOWELL,*) (L. s.)

(*JOHN ARTS,*) (L. s.)

(*CHARLES SIMMONS,*) (L. s.)

(*ROGER WILLIAMS.*) (L. s.)

STATE OF *NEW YORK*, }
 County of (*New York*), } ss.:

On this (*tenth*) day of (*April*), in the year one thousand nine hundred and (*five*), before me personally came (*Russell Lowell, John Arts, Charles Simmons*) and (*Roger Williams*), to be known and known to me to be the individuals described in and who executed the foregoing instrument, and they severally acknowledged that the executed the same.

(*ARTHUR POE,*)

Notary Public,
 (*New York*) County.

GENERAL RELEASES.

FORM No. 440.

General Release (Usual Form).*

KNOW ALL MEN BY THESE PRESENTS, that (*I, Thomas Davis,*) of (*the Borough of Manhattan, in the City of New York,*) for and in consideration of the sum of (*one dollar,*) lawful money of the United States, to me in hand paid by (*Robert Reed,*) of (*the same Borough and City,*) the receipt whereof is hereby acknowledged, have remised, released and forever discharged, and by these presents do for (*myself*) and (*my*) heirs, executors and administrators, remise, release and forever discharge the said (*Robert Reed, his*) heirs, executors and administrators, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever in law or in equity, which against the said (*Robert Reed I*) ever had, now have, or which (*I,*) or (*my*) heirs, executors or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, and more particularly from (*any cause of action, claim or demand, which I, or my executors, administrators or assigns, may have against the said Robert Reed by reason of his indorsement upon a certain promissory note for the sum of fifty dollars, made by Ralph Waldo, payable to me or my order and bearing date January 2, 1905.*)

IN WITNESS WHEREOF, (*I*) have hereunto set (*my*) hand and seal the (*tenth*) day of (*April,*) in the year of our Lord one thousand nine hundred and (*five.*)

(*THOMAS DAVIS.*) (SEAL.)

(Acknowledgment.)

* Section 840 of the Code of Civil Procedure provides that a seal on an executory instrument is only presumptive evidence of a sufficient consideration, which may be rebutted as if the instrument was not sealed.

It has been held however, that this section has no application to a release under seal but that as to this instrument the rule of the common law, to the effect that a seal is conclusive evidence of consideration still prevails. *Gray vs. Barton*, 55 N. Y. 68, at p. 71; *Finch vs. Simon*, 61 App. Div. 139 at p. 141.

Reserving Rights Against Some Joint Debtors.

FORM No. 441.

**General Release*—Reserving Rights Against Some of Persons
Jointly Liable (Covenant Not to Sue).**

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS (*Robert Reed*) and (*John Power*) are jointly indebted to the undersigned (*Thomas Davis as makers of a joint promissory note for \$1,000 bearing date December 8th, 1902, payable 30 days after the date thereof*) and

WHEREAS the said (*Robert Reed*) has made a separate composition and settlement with the undersigned of his liability upon said claim,

NOW THEREFORE, (*I, Thomas Davis,*) of (*the Borough of Manhattan, in the City of New York,*) for and in consideration of the sum of (*one dollar,*) lawful money of the United States, to (*me*) in hand paid by (*Robert Reed,*) of (*the same Borough and City,*) the receipt whereof is hereby acknowledged, pursuant to the statute in such case made and provided, have remised, released and forever discharged, and by these presents do for (*myself*) and (*my*) heirs, executors and administrators, remise, release and forever discharge the said (*Robert Reed, his*) heirs, executors and administrators, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands, whatsoever, in law or in equity, which against the said (*Robert Reed I*) ever had, now have or which (*I,*) or (*my*) heirs, executors or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, and more particularly from any cause of action, claim or demand, which (*I,*) or (*my*) executors, administrators or assigns, may have against the said (*Robert Reed,*) upon (*said note*) expressly excepting and reserving and not hereby intending to discharge or release or in any way affect any right,

* This release is executed according to the provisions prevailing in several States, by which a joint debtor may make a separate composition with his creditor, such composition to discharge the debtor making it, and him only. A member of a partnership cannot thus compound for a partnership debt, until the partnership has been dissolved. Such release does not impair the creditor's right of action against any other joint debtor. (New York Code Civ. Proc., § 1942; Birdseye's R. S., 2d ed., pp. 1714-1715.)

Reserving Rights Against Some Joint Debtors.

demand, claim or cause of action which (*I*) or (*my*) executors, administrators or assigns may or can have against the said (*John Power*) or any other person upon said (*note*) claim, liability or demand by reason of the facts above set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the (*tenth*) day of (*April*,) in the year of our Lord one thousand nine hundred and (*three*.)

(*THOMAS DAVIS.*) (SEAL.)

(Acknowledgment.)

LEASES.

FORM No. 442.

Lease of Apartment.

THIS AGREEMENT, made the (*fourth*) day of (*September*), in the year one thousand nine hundred and (*two*), between (*Robert Washington*), party of the first part, as landlord, and (*James Meigs*), party of the second part, as tenant, witnesseth, that the said party of the first part, has agreed to let, and hereby does let, to the party of the second part, as tenant, and the said party of the second part as tenant, has agreed to take, and hereby does hire from the said party of the first part, (*the second*) floor of the of the house known and designated as (*374 West End avenue*), in (*the Borough of Manhattan, in the City of New York*), for the term of (*one year*), to commence (*October 1st, 1902*), and to end (*September 30, 1903*), to be occupied as a strictly private dwelling apartment (*by himself and family*), consisting of (*self, wife and two children*), and not otherwise. And the said party of the second part hereby covenants and agrees to pay unto the said party of the first part, (*the annual*) rent or sum of (*seven hundred and eighty*) (\$780) dollars, payable in (*equal monthly*) payments of (\$65.00) each (*in advance*) on the (*first*) day of (*each and every month*).

This lease is granted upon the express condition, however, that in case said landlord, his agents or assigns, deems objectionable or improper any conduct on the part of said tenant or occupants, said landlord, his agents or assigns, shall have full license and authority to re-enter, and have full possession of said premises, either with or without legal process, on giving five days' previous notice of his intention so to do, and tendering repayment of the rent paid on account of the unexpired term demised; and upon the expiration of said notice and tender of payment made as aforesaid, said landlord, his agents or assigns, shall be entitled to the immediate possession thereof; and in consideration of the above letting, I, the party of the second part, consent that the said landlord, his agents or assigns, shall not be liable to prosecution or damages for so resuming possession of said premises.

Apartment.

The said premises are also leased upon the further covenants and conditions:

1st.—That the tenant shall take good care of the apartment and fixtures, and suffer no waste or injury; shall not drive picture or other nails into the walls or woodwork of said premises, nor allow the same to be done; and shall at his own cost and expense make and do all repairs required to walls, ceilings, paper, glass and glass globes, plumbing work, ranges, pipes and fixtures belonging thereto, whenever damage or injury to the same shall have resulted from misuse or neglect; and shall repair and make good any damage occurring to the building, or any tenant thereof, by reason of any neglect, carelessness, or injury to the dumb-waiters, gas or Croton water pipes, meters or faucets, and connections by the tenant himself or any of his family or household or upon the premises leased to said tenant, and not call on the party of the first part for any disbursement whatsoever; and at the end or other expiration of the term, shall deliver up the demised premises in good order and condition, damage by the elements excepted; and the said party of the first part shall not be liable for any damage by leakage of Croton water, or for any cause in any event.

2d.—That the tenant shall not expose any sign, advertisement, illumination or projection in or out of the windows or exterior, or from the said building, or upon it in any place, except such as shall be approved and permitted in writing by the owner or his authorized agent, and the said tenant shall use only such shades in the front windows of said apartment as are put up or approved by owner.

3d.—That the tenant shall not assign this agreement, nor underlet the premises, or any part thereof, nor make any alterations in the apartments or premises without the landlord's or agent's consent in writing; nor permit or suffer upon the same any act or thing deemed extra-hazardous on account of fire; and shall comply with all the rules and regulations of the board of health and city ordinances applicable to said premises; and that he will not use or permit to be used the said premises, nor any part thereof, for any purpose other than that of a private dwelling apartment for him and his family consisting of parties above mentioned.

4th.—That the tenant shall, in case of fire, give immediate notice thereof to the landlord, who shall thereupon cause the damage to be repaired as soon as reasonably and conveniently may be; but if the

Apartment.

premises be so damaged that the landlord shall decide to rebuild, the term shall cease, and the accrued rent be paid up to the time of the fire.

5th.—That the tenant shall consult and conform to the regulations governing said house, and to any reasonable alteration or regulation that may be deemed necessary for the protection of the building, and the general comfort and welfare of the occupants of the same.

6th.—That in case of default in any of the covenants, the landlord may resume possession of the premises, and relet the same for the remainder of the term, at the best rent that he can obtain for account of the tenant who shall make good any deficiency, and any notice, in writing, of intention to re-enter, as provided for in the third section of an act entitled "An Act to Abolish Distress for Rent, and for other purposes," passed May 13, 1846, is expressly waived by him.

7th.—That during three months prior to the expiration of the term hereby granted, applicants shall be admitted at reasonable hours of the day to view the premises until rented, and the landlord or his agents, shall also be permitted at any time during the term, to visit and examine them at any reasonable hour of the day, and whenever necessary for any repairs to same or any part of the building, servants and agents shall be permitted to make the same.

8th.—Notice. The storerooms are provided by the owner of this building to accommodate the tenants in the storage of bicycles or other articles, with the express understanding that the room is furnished gratuitously by the landlord and that tenants using the same for any purpose do so at their own risk, and upon the express stipulation and agreement that the landlord shall not be liable for any loss, damage or injury whatever.

It is hereby expressly understood and agreed that the character of the occupancy of said demised premises, as above expressed, is an especial consideration and inducement for the granting of this lease by said landlord to said tenant, and in the event of a violation by said tenant of the restriction against sub-letting the premises, or permitting same to be occupied by parties other than aforesaid, or of a violation of any other restriction or condition therein imposed, said lease and agreement shall, at the option of said landlord, his agents or assigns, cease and determine and be at an end, anything hereinbefore contained to the contrary hereof in anywise notwithstanding.

Apartment.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this (4th) day of (September,) one thousand nine hundred and (two.)

(ROBERT WASHINGTON,) (L. S.)

(JAMES MEIGS.) (L. S.)

Sealed and delivered in

the presence of

(F. L. SEARING.)

(Acknowledgments.)

FORM No. 443.

Lease of Apartment.

THIS AGREEMENT, made the (13th) day of (May,) in the year one thousand nine hundred and (five,) between (Nathaniel B. Walsh,) party of the first part, as landlord, and (James J. McGrath,) party of the second part, as tenant, witnesseth:

That the said party of the first part has agreed to let, and hereby does let, to the said party of the second part, as tenant, and the said party of the second part, as tenant, has agreed to take, and hereby does take, from the said party of the first part (the second floor) apartment on the (easterly) side of the house known and designated as (478 East One Hundred and Twentieth street, in the Borough of Manhattan, in the City of New York,) for the term of (two) years, unless sooner terminated as hereinafter provided, to commence (October 1, 1905,) and to end (September 30, 1907,) to be occupied as a strictly private dwelling apartment by himself and family, and not otherwise. And the said party of the second part hereby covenants and agrees to pay unto the said party of the first part the annual rent or sum of (eight hundred) (\$800) dollars, in equal monthly payments of (sixty-six and 67/100) dollars (\$66.67) each (in advance,) on the (first) day of (each and every month) during said term.

This lease is granted and accepted with the express understanding and agreement, that if at any time during the term above specified the landlord or his agents or assigns shall deem the tenancy undesirable, the landlord or his agent or assigns may terminate the lease by giving to the tenant a written notice of five days of an intention to terminate the same, and the term of this

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lease shall expire upon the date therein mentioned, whereupon the tenant will vacate the premises and render up peaceable possession of the same, and any rent paid by the tenant in advance of the date of the termination shall and may be retained by the landlord in liquidation of damages and not by way of penalty or forfeiture, but nothing herein contained shall be deemed a waiver by the landlord of any claim for damages for injury to the property prior to the date of termination.

The said premises are also leased upon the further covenants and conditions:

1. That the tenant shall take good care of the apartment and fixtures, and suffer no waste or injury; shall not drive picture or other nails into the walls or woodwork of said premises, nor allow the same to be done, and shall at his own cost and expense make and do all repairs required to wall, ceilings, paper, glass and glass globes, plumbing works, ranges, pipes and fixtures belonging thereto, and shall repair and make good any damage occurring to the building, or any other tenant thereof, by reason of any neglect, carelessness, or injury to the dumb-waiters, gas or Croton water pipes, meters or faucets, and connections, by the tenant himself or any of his family or household or upon the premises leased to said tenant, and not call on the party of the first part for any disbursement whatsoever, and at the end or other expiration of the term, shall deliver up the demised premises in good order and condition, and the said party of the first part shall not be liable for any damage by leakage of Croton water, or from any cause, in any event.

2. That the tenant shall not expose any sign, advertisement, illumination or projection in or out of the windows or exterior, or from the said building, or upon it in any place, except such as shall be approved and permitted in writing by the landlord or his authorized agent, and the said tenant shall use only such shades in the front windows of said apartment as are put up or approved by the landlord or his authorized agent; nor shall the said tenant keep or maintain in or about said premises or permit any other person to keep or maintain therein, any dogs or other domestic or wild animals without the written consent of the landlord.

3. That the tenant shall not assign this agreement, or under-let the premises, or any part thereof, nor make any alterations in the apartments or premises, without the landlord's or agent's consent in writing; nor do, permit or suffer upon the same, any act or thing deemed extra-hazardous on account of fire; and shall comply with

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all the rules and regulations of the board of health and city ordinances applicable to said premises; and that he will not use or permit to be used the said premises, nor any part thereof, for any purpose other than that of a private dwelling apartment for himself and family.

4. That the tenant shall, in case of fire, give immediate notice thereof to the landlord, who shall thereupon cause the damage to be repaired as soon as reasonably and conveniently may be; but if the premises be so damaged that the landlord shall decide to rebuild, the term shall cease, and the accrued rent be paid up to the time of the fire.

5. That the tenant shall consult and conform to all rules and regulations now in force or hereafter adopted for the protection of the building or the general comfort, safety and benefit of the occupants of the same.

6. That in case of default in any of the covenants, or if the premises become vacant, the landlord may re-enter by means of summary proceedings or any other method prescribed by law, with or without notice of an intention to do so, and resume possession and re-let the premises in his own name, without terminating this lease or in any manner affecting the obligation of the tenant to pay the rent herein covenanted to be paid, in which event, however, there shall be credited to the account of the tenant the amount received from said re-letting after deducting the expenses of such summary or other proceedings as may be necessary in order to regain possession under this provision, as well as the cost of re-letting the premises, and the execution of a new lease for the same premises shall not terminate the tenant's liability or obligations hereunder, which shall in any event remain in full force and effect for the full term of this lease, and a tenant, who has once vacated may not re-enter without the consent of the landlord or his agents, and no act or thing done by the landlord or his agents during the term hereby granted, shall be deemed an acceptance of a surrender of said premises, and no agreement to accept a surrender of said premises shall be valid, unless the same be made in writing and personally subscribed by the landlord.

7. That during four months prior to the expiration of the term hereby granted, applicants shall be admitted at reasonable hours of the day to view the premises until rented, and the landlord or his agents shall also be permitted at any time during the term to visit and examine them at any reasonable hour of the day, and workmen may enter at any time, when authorized by the landlord or his

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agents, to make or facilitate repairs in any part of the building, and if the said tenant shall not be personally present to open and permit an entry into said premises, at any time, when for any reason an entry therein shall be in the judgment of the landlord or his agents necessary or permissible hereunder, for the protection of the building or property therein, or to make such repairs the landlord or his agents may forcibly enter the same without rendering himself or them liable to any claim or cause of action for damages by reason thereof, and without in any manner affecting the obligations and covenants of this lease; it is, however, expressly understood that the right and authority hereby reserved, does not impose, nor does the landlord assume, by reason thereof, any responsibility or liability, whatsoever for the care or supervision of said premises, or any of the pipes, fixtures, appliances or appurtenances therein contained or therewith in any manner connected.

8. That the rent hereby reserved shall be a lien upon all the goods, furniture and effects of the tenant in or upon the premises not exempt by law from levy and sale under an execution from the commencement of the tenancy, and, in case of default, continuing for three months after the expiration of the term and until the termination of any action brought within the said three months in which a judgment might be recovered and execution issued against said property, and it is hereby covenanted and agreed that this lien shall attach to all goods, furniture and effects placed in or upon said premises by the tenant or by any other person with his consent.

9. It is understood and agreed that the storerooms are provided by the owner of this building to accommodate the tenants in the storage of trunks, bicycles, or other articles, with the express understanding that the room is furnished gratuitously by the landlord, and that tenants using the same for any purpose do so at their own risk, and upon the express stipulation and agreement that the landlord shall not be liable for any loss of property stored therein, or for any damage or injury whatever.

10. The party of the first part will furnish to the party of the second part, without additional charge, steam heat during winter months, and hot and cold water; and it is further mutually understood and agreed by and between the parties hereto, that in case it shall become necessary or proper at any time, from accident, or for improving the condition or operation of the heating apparatus, plumbing, boilers, machinery, or anything appertaining thereto, to omit the operation of said heating apparatus or other service,

House.

and completed, the party of the first part shall be at liberty to do the same without in any manner or respect affecting or modifying the obligations or covenants of said party of the second part herein contained, or rendering himself liable for any damages or offset by reason thereof.

It is hereby expressly understood and agreed that the character of the occupancy of said demised premises, as above expressed, is an especial consideration and inducement for the granting of this lease by said landlord to said tenant, and in the event of a violation, by said tenant, of the restriction against subletting, or if the tenant shall cease to occupy the premises or permit the same to be occupied by parties other than as aforesaid, or violate any other restriction or condition therein imposed, said lease and agreement may, at the option of said landlord, his agents or assigns, be terminated in the manner hereinbefore recited.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this (13th) day of (*May*,) one thousand nine hundred and (*five*.)

(*NATHANIEL B. WALSH.*) [L. s.]
(*JAMES J. McGRATH.*) [L. s.]

Sealed and delivered in
the presence of

(*THOMAS EDWARDES.*)

(Acknowledgments.)

FORM No. 444.

Lease of a House.

Croton Water, Municipal and Fire Clauses and Covenant against Subletting.

THIS INDENTURE, made the (*first*) day of (*May*,) one thousand nine hundred and (*two*,) between (*Alfred Wilkens*,) of the (*Borough of Manhattan, City of New York*,) party of the first part, and (*Thomas O'Connor*,) of (*the same place*,) party of the second part, witnesseth, that the said party of the first part has letten, and by these presents does grant, demise, and to farm let, unto the said party of the secondpart, the (*three-story and base-*

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ment brick dwelling) house, situate on the (*westerly*) side of (*Manhattan Avenue, in the Borough of Manhattan and City of New York,*) and known as (*No. 140 Manhattan Avenue,*) together with the appurtenances, for the term of (*one year*) from the (*first*) day of (*May,*) one thousand nine hundred and (*two,*) at the yearly rent or sum of (*fourteen hundred*) dollars (\$1,400), to be paid in equal monthly payments in advance on the first day of each and every month during the term aforesaid.

And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises and the same to have again, repossess and enjoy. And the said party of the second part does covenant to pay to the said party of the first part the said yearly rent as herein specified.

And also, to pay the regular annual rent or charge, which is or may be assessed or imposed according to law, upon the said premises, for the Croton water, when due in each year, during the term, and if not so paid, the same shall be added to the month's rent then due. And the said party of the second part further covenants that he will not assign this lease nor let nor underlet the whole or any part of the said premises, nor make any alterations therein without the written consent of the said party of the first part, under the penalty of forfeiture and damages; and that he will not occupy nor use the said premises, nor permit the same to be occupied nor used for any business deemed extra hazardous on account of fire or otherwise, without the like consent under the like penalty. And the said party of the second part, further covenants that he will permit the said party of the first part, or his agent, to show the premises to persons wishing to hire or purchase, and on and after the first day of February next preceding the expiration of the term, will permit the usual notices "to let" or "for sale" to be placed upon the walls or doors of said premises, and remain thereon without hindrance or molestation.

And it is further agreed between the parties to these presents, that in case the building or buildings erected on these premises hereby leased shall be partially damaged by fire, the same shall be repaired as speedily as possible at the expense of the said party of the first part; that in case the damages shall be so extensive as to render the building untenable, the rent shall cease until such time as the building shall be put in complete repair, but in case

House.

of the total destruction of the premises by fire or otherwise, the rent shall be paid up to the time of such destruction, and then and from thenceforth this lease shall cease and come to an end, provided, however, that such damage and destruction be not caused by the carelessness, negligence, or improper conduct of the party of the second part, his agents or servants.

And the said party of the second part further covenants and agrees that he will comply with all the requirements of the board of health, municipal authorities and police and fire departments of the City of New York, and that he will not create nor permit any nuisance in the premises hereby rented to the annoyance of neighboring occupants.

And the said party of the second part further covenants and agrees to use said rented premises only for a private dwelling for himself and family,

And at the expiration of the said term the said party of the second part will quit and surrender the premises hereby demised, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

And the said party of the first part does covenant that the said party of the second part, on paying the said yearly rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

And it is further understood and agreed, that the covenants and agreements contained in the within lease are binding on the parties hereto and their legal representatives.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands and seals the day and year first above written.

(ALFRED WILKENS,) [L. s.]

(THOMAS O'CONNOR.) [L. s.]

Sealed and delivered in
the presence of

(EDITH BURTON.)

STATE OF NEW YORK, }
County of (New York,) } ss.:

On the (*first*) day of (*May*), in the year one thousand nine hundred and two, before me personally came (*Alfred Wilkens*) and

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(*Thomas O'Connor*,) to me known, and known to me to be the individuals described in, and who executed the foregoing instrument, and they severally acknowledged that they executed the same.

(*FRANK ELLIS*,)

Notary Public,

(*New York*) County, No. (74.).

FORM No. 445.

Lease of House — Astor Form.

THIS AGREEMENT, between (*William Judson*,) of (*14 West 72nd street, Borough of Manhattan, City of New York*,) as landlord, and (*Annette Gleason*,) as tenant, witnesseth, that the said landlord lets unto the said tenant, and said tenant hires from the said landlord the entire (*four-story and basement, stone dwelling*) house, known as (*No. 18 West 72nd street, in the Borough of Manhattan, City of New York*,) for the term of (*two years*,) from the (*1st*) day of (*October, 1903*,) to be occupied as a private dwelling, and not otherwise, at the yearly rental of (*three thousand*) dollars, payable in equal (*quarterly*) instalments on the first day of (*January, April, July and October*) in each year, upon the conditions and covenants following:

1st. That the tenant shall pay the rent quarterly as aforesaid, as the same shall fall due.

2d. That the tenant shall take good care of the house and its fixtures, and suffer no waste; and shall at (*her*) own cost and expense, make and do all repairs required to the plumbing work and pipes, furnace, range, and fixtures belonging thereto, and shall keep the closets, pipes and the connections with the Croton water main, free from ice and other obstructions at (*her*) own expense. And the tenant shall keep the sewer connections free from obstructions to the satisfaction of the municipal and police authorities and not call upon the party of the first part, for any disbursements or outlay during the hereby granted term; and at the end or other expiration of the term shall deliver up the demised premises in good order and condition, damages by the elements excepted.

That the tenant shall pay the Croton water tax imposed on the hereby demised building in each and every year during the hereby granted term.

That no improvements or alterations shall be made in or to the hereby demised building, without the consent of the landlord in writing. All improvements made by the tenant to belong to the landlord, at the expiration of the hereby granted lease.

3d. That the tenant shall further and promptly execute and fulfill all the ordinances of the city corporation applicable to said premises; and all orders and requirements imposed by the board of health, and the police department, for the correction, prevention and abatement of nuisances or other grievances in, upon or connected with said premises during said term, at (*her*) own expense.

4th. That the tenant shall not assign this agreement, or underlet the premises, or any part thereof or make any alterations in the building or premises without the landlord's consent, in writing; or occupy, or permit or suffer the same to be occupied for any business or purpose deemed extra hazardous on account of fire.

5th. That the tenant shall in the case of fire, give immediate notice thereof to the landlord, who shall thereupon cause the damage to be repaired forthwith. But if the premises be so damaged that the landlord shall decide to re-build, the term shall cease, and the accrued rent be paid up to the time of the fire.

6th. That in case of default in any of the covenants, the landlord may resume possession of the premises, and re-let the same for the remainder of the term, at the best rent that he can obtain, for account of the tenant, who will make good any deficiency.

7th. That the landlord shall have liberty, three months prior to the expiration of the term hereby granted, to put in some conspicuous part of the exterior of said premises, a notice "for sale," or "to let," and applicants shall be admitted at reasonable hours of the day to view them until rented. And the landlord or his agents shall also be permitted at any time during the term, to visit and examine the premises at any reasonable hour of the day.

IN WITNESS WHEREOF, the parties to this agreement, have hereunto interchangeably set their hands and seals, this (1st) day of (*October*, 1903.)

(*WILLIAM JUDSON*), [L. s.]

(*ANNETTE GLEASON*.) [L. s.]

Sealed and delivered in

the presence of

(*GLADYS GLEASON*.)

(Acknowledgments.)

FORM No. 446.**Lease of House — Lorillard Form.**

THIS AGREEMENT, made the (2nd) day of (*September*, 1904,) between (*Oliver S. Hobson*,) of the first part, and (*Ferdinand O. Desmond*,) of the second part, witnesseth, that the party of the first part has agreed to let, and hereby does let and the party of the second part has agreed to take, and hereby does take and hire from the party of the first part, at the rent and upon the terms and conditions following: The (*four-story brown stone*) house, (*No. 348 West 14th street*,) in the (*Borough of Manhattan, City of New York*,) to be used as (*a dwelling and a first-class boarding house*) and for no other purpose, for the term of (*one year*,) to commence on the (*first*) day of (*October*, 1904,) and to end on the (*30th*) day of (*September*, 1905,) at 12 o'clock, noon, of that day; and the party of the second part agrees to pay to the party of the first part for the said premises the annual rent of (*one thousand*) (\$1,000) dollars in lawful money of the United States, in equal (*monthly*) payments, to be made on the (*fifteenth*) day of each and every month during said term.

And it is provided and agreed, that the party of the second part shall not, during the continuance of said term underlet said premises or any part thereof, nor assign over this lease or the said term, nor make alterations on said premises, nor allow or suffer to be carried on therein any occupation other than herein mentioned; and the party of the first part shall not be held liable for any repairs on the premises, except as hereinafter mentioned; and if default shall be made in the payment of said rent, or any part thereof, or in performance by the party of the second part, of any of the conditions or agreements herein contained, on his part to be performed, the party of the first part shall be and hereby is authorized to re-enter the said premises, either with or without legal process, at his option, and to repossess and enjoy the same as of his former estate therein.

And it is further provided and agreed, that the party of the first part, or any person by order may put a bill on said house for the letting or sale thereof, and keep the same on so long as may be necessary; and during week days applicants for said house and premises, shall and may freely enter and depart therefrom, at reasonable hours, without hindrance from the party of the second part, or any person in his behalf.

If said premises shall become vacant during said term, then the party of the first part, or any person by order may re-enter the same, without being liable for any prosecution therefor, and may thereupon re-let the said premises as the agent of the party of the second part, or otherwise, applying the avails thereof to the payment of the rent due or payable by these presents, and the balance, if any, to pay over to the party of the second part.

And it is further provided and agreed, that in case the building or the premises hereby leased shall be partially damaged by fire or other elements at any time during said term, the same shall be repaired by the said party of the first part with all reasonable dispatch, and a proportionate reduction of rent shall be allowed the said party of the second part for the time so occupied in repairing such part or parts of said building and premises as may be so damaged. But in case the damage by fire or otherwise shall amount substantially to the destruction of the building, then the said demised term shall cease, and the said rent shall be paid up to the time of such destruction.

And it is further provided and agreed, that if the whole or any part of the premises hereby demised shall be taken by city or State authority for any public use or purpose, then the term hereby granted shall cease from the time when possession of the part so taken shall be required for such public purpose.

The party of the second part hereby agrees to keep the water and gas pipes and fixtures of said house and premises in good repair and condition, and will also do all repairs to said premises at their own proper cost and expense.

All additions and improvements which may be made by either of said parties to or upon said premises shall be the property of the party of the first part, and shall remain upon and be surrendered with the demised premises at the termination of said tenancy.

The party^a of the second part shall quit and leave said premises at the expiration of said term, in as good state and condition as the same are now in, reasonable use and wear thereof excepted.

The party of the second part agrees at (*his*) own expense, to comply with all sanitary laws, ordinances and rules and all orders of the board of health or other authorities affecting the cleanliness, occupation and use of the demised premises, and the sidewalks in front of the same.

And the party of the second part hereby agrees to pay, on demand, as rent and in addition to the rent hereinbefore specified

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all water taxes and charges that shall be imposed or charged during the term, by meter or otherwise, upon the demised house and premises in such amounts and at such times as the same shall be demanded by the party of the first part or his agent.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands, the day and year first above written.

(OLIVER S. HOBSON,) [L. s.]

(FERDINAND O. DESMOND.) [L. s.]

Sealed and delivered in

the presence of

(PERCIVAL WILLIAMS.)

(Acknowledgment.)

FORM No. 447.

Lease — Of Office.

THIS AGREEMENT, made this (*thirtieth*) day of (*April*), one thousand nine hundred and (*two*), between (*The Trinity Realty Company, a corporation created under the laws of the State of New York*), party of the first part, and (*William N. Park*), party of the second part, witnesseth, that the said party of the first part, as lessor, does hereby lease unto the said party of the second part, and the said party of the second part does hereby hire and take, as lessee, the suite of rooms known as (*Nos. 34 to 44*), in the (*third*) story of the building known as the (*Exchange Building*), in the (*City of New York*), situated on (*Broadway, between Pine and Cedar streets*), to be used as (*law offices*), and for no other purpose, for a term of (*five years*), to commence on the (*first*) day of (*May, 1902*), and to end on the (*thirtieth*) day of (*April, 1907*), at the yearly rent of (*thirty-five hundred*) dollars, lawful money of the United States, all of which is payable in advance in equal (*quarter-yearly*) payments, on the (*first*) days of (*February, May, August and November*), in each and every year, until the expiration of said term, at the principal office of the said lessor in the (*City of New York*).

The above letting is upon the following conditions, all and every one of which the said lessee for himself, his heirs, administrators and assigns does covenant and agree to and with the said lessor, its successors, and assigns, to keep and perform:

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1st. The said lessee shall pay to the said lessor, the said specified rent at the times and in the manner above provided; and in case of the non-payment of the said rent at the said times and place, or in case the said leased premises shall be deserted or vacated, this lease, at the option of the lessor, shall become void, or if said lessor so elect, the said lessor shall have the right to enter the same as the agent of the said lessee either by force or otherwise, without being liable to any prosecution therefor, and to re-let the said premises as the agent of the said lessee and to receive the rent therefor, and said lessee shall pay said lessor any deficiency that may arise by reason of such re-letting, and said lessee hereby agrees to give written notice to the lessor on or before the fifteenth day of January, 1907, of his desire to rent the said premises for another term or the surrender of the same.

2d. Said premises or any part thereof shall not be assigned, let nor underlet, nor used nor permitted to be used for any purpose other than above mentioned, without the written consent of the said lessor or of its legal representatives first indorsed hereon, and if so assigned, let or underlet, used or permitted to be used without such written consent, the said lessor may re-enter said premises, either by force or otherwise, without being liable to prosecution or any claim therefor, and re-let the said premises, this lease, by such unauthorized act, becoming void if the said lessor shall so determine and elect.

3d. Said lessee shall quit and surrender said premises at the end of said term in as good condition as the reasonable use thereof will permit, and shall not make any alterations, additions or improvements in said premises without the written consent of said lessor, and all alterations, additions or improvements which may be made by either of the parties hereto upon the premises, except movable office furniture put in at the expense of the lessee, shall be the property of the said lessor, and shall remain upon and be surrendered with the premises, as a part thereof, at the termination of this lease, without disturbance, molestation or injury.

4th. The rules and regulations in regard to the said building, printed upon the back of this lease, and which are hereby made a part of this lease, shall, during the said term, be in all things observed and performed by the said lessee, and by his clerks, servants and agents.

5th. If, during the term of this lease, the building or premises are destroyed by fire or the elements, or partially destroyed so as to render the premises demised wholly unfit for occupancy, and if

they shall be so badly injured that they cannot be repaired within sixty days from the happening of such injury, then this lease shall cease and become null and void from the date of such damage or destruction, and then said lessee shall immediately surrender said premises and all interest therein to said lessor, and said lessee shall pay rent within this term only to the time of such surrender; and in case of destruction, or partial destruction, as above mentioned, the said lessor may re-enter and re-possess said premises discharged of said lease, and may remove all parties therefrom; and if said premises shall be repairable within sixty days from the happening of said injury, then the rent shall not run nor accrue after said injury, nor while the process of repairs is going on, and the said lessor shall repair the same with all reasonable speed, and the rent shall recommence immediately after said repairs shall be completed. But if said premises shall be so slightly injured by fire or the elements as not to be rendered unfit for occupancy, then the said lessor agrees that the same shall be repaired with reasonable promptitude, and in that case the rent accrued or accruing shall not cease nor determine.

6th. Said lessor will keep the hereby leased premises warmed by a steam-heating apparatus, from the tenth day of October in each year to the twentieth day of May following, and will also furnish throughout each year a reasonable amount of gas or electric light as the lessor may determine, for lighting said premises; and will also cause said premises to be cleaned and generally cared for by the janitor of the building.

7th. Said lessor shall not be liable for any damage to any property, at any time, in said premises or building, from the Croton or other water, rain or snow, which may leak into, issue or flow from any part of said building of which the premises hereby leased are part, or from the pipes or plumbing works of the same, or from any other place or quarter.

8th. Said lessee shall give to said lessor or to its agent prompt written notice of any accident to or defects in the water-pipes, gas-pipes, electric light or fixtures, or heating apparatus, to be remedied by said lessor with due diligence.

9th. And it is understood and agreed that in case of the violation of the foregoing covenants, agreements and conditions, or of any of the rules, or regulations, now or hereafter to be established by the said lessor, for the government of said building, or either of them, by the said lessee, this lease shall thenceforth, at the option of the said lessor, become null and void, and the said lessor may re-

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enter upon said premises without notice or demand, and in such case rent shall become due, be apportioned and paid on and up to the day of such entry, and the said lessee hereby expressly waives all right to any notice to quit possession, or of intention to re-enter under the statute, anything in this lease to the contrary notwithstanding. And said lessee shall be liable for all loss or damage resulting from such violation as aforesaid.

IN WITNESS WHEREOF, the said lessor has hereunto caused its corporate seal to be affixed, and the same to be signed by its general manager, and the said lessee has hereunto set his hand and seal the day and year first above written.

(*THE TRINITY REALTY COMPANY,*) (SEAL.)

By (*Walter Gibbs,*

Signed, sealed and delivered
in the presence of

General Manager.)

(*WILLIAM N. PARK.*) (SEAL.)

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

On the (*30th*) day of (*April,*) in the year one thousand, nine hundred and (*two,*) before me personally came (*Walter Gibbs,*) to me known, who, being by me duly sworn, did depose and say, that he resided in (*the City of New York;*) that he is the (*secretary and general manager*) of (*the Trinity Realty Company,*) the corporation described in, and which executed the foregoing instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

(*MELVIN BAKER,*)

Notary Public,

(*New York*) County.

STATE OF NEW YORK, }
County of (*New York,*) } ss.:

On this (*30th day*) of (*April,*) in the year (*1902,*) before me personally came (*William N. Park,*) to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that (*he*) executed the same for the purposes therein mentioned.

(*MELVIN BAKER,*)

Notary Public,

(*New York*) County.

RULES AND REGULATIONS OF THE EXCHANGE BUILDING.

1. The sidewalk, entry passages, elevators and stairways shall not be obstructed by either of the tenants, or used by them for any other purpose than for ingress and egress from and to their respective offices or places of business.

2. The floors, skylights and windows that reflect or admit light into passageways or into any place in said building shall not be covered or obstructed by either of the tenants. The water closets and other water apparatus shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags, ashes or other substances shall be thrown therein. Any damage resulting to such apparatus from misuse shall be borne by the tenant who shall cause it.

3. No sign, advertisement or notice shall be inscribed, painted or affixed on any part of the outside or inside of said building except of such color, size and style, and in such places upon or in said building, as shall be first designated by said lessor and indorsed hereon. Interior signs on glass doors will be painted for the tenants by the lessor, the cost of the painting being paid by the tenants. Directory tablets, in conspicuous places on each story, with names of the tenants, will be provided by the lessor, to be corrected annually. Changes, alterations or additions to lettering, both upon the directories as well as upon the glass doors, when required, will be made for tenants or sub-tenants by the lessor, the cost of both being paid by the tenants or sub-tenants.

4. No tenant shall do, or permit anything to be done, in said premises, or bring or keep anything therein, which will in any way increase the rate of fire insurance on said building, or on property kept therein, or obstruct or interfere with the rights of other tenants, or in any other way injure or annoy them, or conflict with the laws relating to fires, or with the regulations of the fire department, or with any insurance policy upon said building or any part thereof, or conflict with any of the rules and ordinances of the board of health.

5. The lessor shall in all cases retain the power to prescribe the weight and proper position of iron safes, and all damages done to the building, or any part thereof, by taking in or putting out a safe, or during the time it is in or on the premises, shall be made good and paid by the tenant who shall cause it.

6. Each tenant shall keep the premises leased by him in a good

state of preservation and cleanliness, and shall not suffer any accumulation of useless property nor rubbish therein, and for such purpose shall, during the continuance of this lease employ the janitor of the lessor to take charge of and clean the said leased premises.

7. No tenant shall employ any person or persons other than the janitor of the lessor, for the purpose of such cleaning or of taking charge of said premises, lighting fires, or storing or moving coal, wood or ashes; it being understood and agreed that the lessor shall be in no wise responsible to any tenant for any loss of property from leased premises, however occurring, or any damage done to the furniture or other effects of any tenant by the janitor or any of his employees, or by any other person or persons whatsoever.

8. The lessor shall have the right, by its officers or agent, to enter any premises at reasonable hours in the day to examine the same, or to make such repairs and alterations as it shall deem necessary for the safety and preservation of the said building, and also to exhibit the said premises to be let, and to put on them the usual notice "To be Let," which said notice shall not be removed by any tenant during the three months previous to the expiration of the lease of the premises.

9. Tenants, their clerks or servants, shall not make nor permit any improper noises in the building, smoke tobacco in the elevators nor interfere in any way with other tenants nor those having business with them.

10. It is stipulated and agreed that the said lessor may make such use of the grand entrance hall, and the tributary entrance halls, after six o'clock P. M., as it may deem for the best interests of the society and the building, provided always that some method of ingress and egress be arranged for the tenants.

11. Nothing shall be thrown by the tenants, their clerks or servants, out of the windows or doors or down the passages or skylights of the building.

12. No animals shall be kept in or about the premises.

13. The lessor reserves the right to make such other and further rules and regulations as in its judgment may from time to time be needful for the safety, care and cleanliness of the premises, and for the preservation of good order therein.

14. In order to protect the property of tenants of the building, and to prevent improper persons from having access thereto after business hours, said building will be closed daily at seven o'clock

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P. M., after which hour no person will be allowed to enter or leave the same unless provided with a pass issued by the lessor, and any person found in the building after that hour without such pass will be subject to the surveillance of the night watchman and police force employed by the lessor to take charge of the building. On written application by the parties executing this lease passes will be issued enabling them to enter or depart from the building after said hour upon presenting the same to the night watchman. This regulation will be strictly enforced in the interest of the tenants.

FORM No. 448.**Lease — Place of Business.**

THIS AGREEMENT, between (*J. Manning & Son,*) as landlord, and (*Terese V. Koster,*) as tenant, *witnesseth:*

That the said landlord does let unto the said tenant, and the said tenant does hire from the said landlord, the (*first floor over a store*) of the building now known as (*number 54 West Twenty-fourth Street,*) in the (*Borough of Manhattan, City of New York,*) for a term of (*three years,*) to commence on the (*first*) day of (*October, 1901,*) and to end on the (*first*) day of (*October, 1904,* at 12 o'clock noon, at the yearly rental of (*twelve hundred*) dollars, rent to commence (*November 1st,*) to be paid in (*equal monthly payments in advance on the first day of each and every month during the term,*) upon the conditions and covenants following, which are mutually agreed to:

1st. That the tenant will pay the rent as aforesaid, as the same shall fall due.

2nd. That the tenant will keep said premises in a good state of repair at her own cost and expense, including all repairs required to the plumbing work, Groton water and gas pipes, and fixtures belonging thereto, and at the end or other expiration of the term will deliver up the demised premises in good order and condition, damages by the elements excepted. All improvements made by the tenant are to belong to the landlord and be surrendered with the premises at the termination of the lease.

3rd. That the tenant will not, without the landlord's consent in writing, assign this agreement, nor underlet the premises, nor any

Place Of Business.

part thereof, nor make any alterations in the building or premises, nor occupy the same for any other purpose than (*manufacturing corsets*;) nor occupy nor permit the same to be occupied for any business or purpose deemed extra hazardous, on account of fire, under the penalty of forfeiture and damages, and will promptly comply with and execute all lawful orders and regulations of the board of health, police department and city corporation, relating to said premises, under the like penalty and damages.

4th. That the tenant will, in case of fire, give immediate notice thereof to the landlord, who shall thereupon cause the damage to be forthwith repaired, unless the premises be so damaged that the landlord shall decide to rebuild, in which case, but not otherwise, the term shall cease, and the accrued rent be paid up to the time of the fire. If the building, or any part of it, is so far injured by fire as to be rendered untenable, but is, nevertheless, repaired by the landlord, then an abatement will be made from the rent, corresponding with the time during which, and the extent to which, the same may have been untenable.

5th. That in case of default in any of the covenants or in case the whole, or any part, of said premises shall become vacant, the landlord may resume possession of the premises, either by force or otherwise, without being liable to any prosecution therefor, and relet the same during the remainder of the term, at the best rent that he can obtain for account of the tenant, who will make good any deficiency.

6th. That the landlord shall have liberty, three months prior to the expiration of the term hereby granted, to put upon some conspicuous part of the exterior of said premises, a notice "For Sale" or "To Let," and applicants shall be admitted at reasonable hours of the day to view them until rented. And the landlords, or their agents, shall also be permitted, at any time during the term, to visit and examine the premises at any reasonable hour of the day.

7th. That the tenant shall not place any sign, either upon the inside or outside of said building, except with the written consent of the landlord.

8th. That the landlord hereby gives the tenant the privilege of placing one show case, to stand on the right in front of the entrance to said building, the same show case not to be larger than (*eighteen inches wide, thirty inches long, and not over five feet in height.*)

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IN WITNESS WHEREOF, the parties to this agreement have hereunto interchangeably set their hands and seals, this (*first*) day of (*October*, 1901.)

(TERESE V. KOSTER,) [L. s.]

(J. MANNING & SON.) [L. s.]

By (*Walter Manning*.)

Sealed and delivered in
the presence of

(WEBSTER B. BURTON.)

(Acknowledgments.)

FORM No. 449.

Lease — Place of Business.

THIS AGREEMENT, made this (*first*) day of (*May*, 1902,) between (*The James Realty Corporation*,) of (*the City, County and State of New York, a corporation created under the laws of the State of New York*), hereinafter described as lessor, and (*the National Bank, of New York, a corporation created under the laws of the United States of America*), doing business in (*the City of New York*,) hereinafter described as tenant.

WITNESSETH, That the said lessor does hereby lease unto the said tenant, and the said tenant does hereby hire and take from the said lessor (*all that part of the ground floor of the premises known as 80 Broadway, in the Borough of Manhattan and City of New York*,) bounded and described as follows:

(Description.)

Reserving and excepting therefrom all the elevator shaft and stairway and also all that part of the basement of said premises bounded as follows:

(Description.)

The said tenant has the right of entrance with other tenants in the building through the entrance hall in (*Broadway at the extreme northerly side*) of said building, for the term of (*five*) (5) years to commence on the (*first*) day of (*May*, 1902,) and ending on the (*first*) day of (*May*, 1907,) to be used and occupied for (*a bank*) and for no other purposes.

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The above letting is upon the following conditions, all and every one of which the said tenant covenants and agrees with the said lessor, its successors and assigns to keep and perform:

1st. To pay the yearly rent, or sum of (*nine thousand*) dollars in (*equal monthly payments in advance,*) on the (*first*) day of (*each and every month*) during said term.

2d. Upon any determination of this lease to quit and surrender the premises in as good order and condition as at the beginning of the term, reasonable wear and damage by the elements excepted, and shall not make any alterations, additions nor improvements in said premises without the written consent of said lessor, and all alterations, additions or improvements which may be made by either of the parties hereto upon the premises shall be the property of the lessor, and shall remain upon and be surrendered with the premises as a part thereof upon any determination of this lease without disturbance, molestation or injury.

3d. To pay when assessed and due its proportion of all Croton water rates taxed or charged according to law on said building during the term of this lease, and if not so paid the same shall be added to the rent then due, or to become due.

4th. Not to cut, drill into nor otherwise disfigure, nor permit the disfigurement of the iron, marble, stone or brickwork of the building; nor obstruct nor permit obstruction of any lights, nor skylights, nor injure nor deface the premises, nor use nor suffer to be used, under the penalty of forfeiture and damage, the whole or any part thereof for any purpose more injurious than that above expressed, and said premises or any part thereof shall not be assigned, let nor underlet, nor used nor permitted to be used for any purpose other than above mentioned, without the written consent of the said lessor or of its legal representatives, first indorsed hereon, and if so assigned, let or underlet, used or permitted to be used, without such written consent, the said lessor may re-enter said premises, either by force or otherwise, without being liable to prosecution or any claim, and relet the said premises, this lease by such unauthorized act becoming void if the said lessor shall so determine to elect, and in the event of such subletting nevertheless, such tenant shall be liable for the rents and for the performance of the other covenants and conditions of this lease, and that the granting, giving or waiving of any one or more of such consents shall not render unnecessary any subsequent consent nor consents.

Place Of Business.

5th. Not to use the premises nor any part thereof, nor permit or suffer their use for any business of such a character as to increase the rate of insurance upon said building. The said tenant further agrees to pay all charges assessed for the automatic fire alarm placed in the said demised premises.

6th. To make at the tenant's own cost and expense, all such repairs as shall be necessary to preserve the said premises in good order and condition, and that all such repairs shall be fully equal to the original in class and quality; it being understood that the said lessor shall keep the roof and skylights in order, but shall not be made liable to the tenant for any damage caused by the leakage of the roof, plumbing nor steam heating unless the lessor shall neglect to repair the same within a reasonable time after a written notice of such leakage shall be delivered to the lessor from the tenant.

It is hereby further covenanted and agreed that all workmen employed in making repairs in and about said premises, whether employed by the lessor or the tenant, shall be regarded as the agents of the tenant.

7th. To permit the lessor or its agents or servants to enter the said premises, or any part thereof, for the purpose of inspection and repair, and to show them to persons wishing to hire or purchase; and during six (6) months next preceding the expiration of the term to permit the usual notice of "To Let" (and will, at any time, permit the notice of "For Sale") to be placed on the walls or doors of said building and remain there without hindrance or molestation.

8. The said lessor shall, at all times, have the right to prescribe the form, style, size and location of any and all signs and inscriptions to be placed on any portion of the herein mentioned premises or building, and it is hereby covenanted and agreed that no such signs and inscriptions shall be placed upon the building without the approval of the lessor, and that if any such signs and inscriptions shall be placed upon said buildings, without the approval of the lessor, they may be removed by the lessor or its representatives at the expense of the tenant.

9th. The said tenant shall promptly comply with all rules, orders, ordinances and regulations of the City and State governments, and all other authorities, of any and all their various departments and bureaus applicable to said premises during said term; and shall also promptly comply with and execute all rules,

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orders, ordinances and regulations of the New York Board of Fire Underwriters at the tenant's own cost and expense, and keep the premises free from rubbish, and any waste shall be placed in metal-lined bins.

10th. In the event that it shall be necessary or convenient at any time to stop the operation of the elevator or elevators, or any of them, or the heating or the electric lighting apparatus for the improving, repairing or changing of such elevator or elevators, heating or electric lighting apparatus, boilers, machinery, or anything appertaining thereto, or because of accident, the lessor shall be at liberty to stop the operation of such elevator or elevators, heating or lighting apparatus, or appurtenances, for such reasonable time as shall be necessary for the purposes above stated.

11th. In the event that the said rent be not paid at the times and in the manner above provided, or that there shall be default in any of the covenants and conditions herein contained, this lease and the estate hereby demised shall terminate, and the lessor shall have the right to enter said premises either by force, summary proceedings or otherwise, and dispossess therefrom the tenant and other occupants thereof, and their effects, without being liable to any prosecution therefor, and in case of such removal, dispossession and re-entry the said lessor shall with due diligence let the premises for the remainder of the term, either in his own name or as the agent of the tenant, who shall pay any deficiency which the lessor shall suffer between the rents hereby reserved and those received by the lessor during the residue of the time remaining from the re-entry, and the said tenant shall be liable for the performance of the covenants and conditions of the said lease during the residue of the term remaining after the re-entry.

12th. If the premises hereby leased shall be injured by fire or otherwise, but not rendered untenable, the same shall be repaired with all proper speed, at the expense of the lessor; but if the damage shall be so extensive as to render the premises untenable, the rent shall be proportionately paid up to the time of such damage, and shall from thenceforth cease until such time as the same shall be put in good repair; but in case of such destruction of the building by fire or otherwise as to render it necessary to rebuild the same, and upon the payment of the proportional rent up to the time of such destruction, then and from thenceforth this lease shall cease and come to an end.

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13th. And said lessor hereby covenants that the said tenant, upon paying the yearly rent and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

And it is further understood and agreed that the covenants and agreements contained in the within lease are binding on and for the benefit of the parties hereto and their heirs, successors, legal representatives and assigns;

And it is further agreed that no waiver of a breach of any of the conditions or covenants herein contained shall be construed as a waiver of any subsequent breach of such condition or covenant.

IN WITNESS WHEREOF, the lessor has caused its corporate seal to be hereunto affixed, and the same to be signed by its treasurer, and the said tenant has caused its corporate seal to be affixed the day and year first above written.

(THE JAMES REALTY CORPORATION,)

By (*Arthur Davison*,)

(*Treas.*)

The James
Realty Corporation }
Seal.

(THE NATIONAL BANK OF THE CITY OF
NEW YORK,)

(Seal.)

By (*C. Van Orden*,)

(*President.*)

Attest: (*William Hart*,)

(*Cashier.*)

Signed, sealed and delivered }
in the presence of }

(*EMMET O'NEILL.*)

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On this (19th) day of (*June*,) in the year (1902,) before me personally appeared (*William Hart, Cashier*) of the (*National Bank of New York*,) with whom I am personally acquainted, who being by me duly sworn, said that he resided in (*the City of New York*;) that he was the (*Cashier*) of the (*National Bank of New York*;) that he knew the corporate seal of the said Bank; that the

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seal affixed to the foregoing instrument was such corporate seal; that it was affixed by order of the board of directors of the said Bank, and that he signed his name thereto by the like order as (*Cashier*) of said Bank. And the said (*William Hart*) further said that he was acquainted with (*Cornelius Van Orden*) and knew him to be the (*President of*) the said (*Bank*;) that the signature of the said (*Cornelius Van Orden*) subscribed to the said instrument was in the genuine handwriting of the said (*Cornelius Van Orden*) and was thereto subscribed by the like order of the said board of directors, and in the presence of him, the said (*William Hart*.)

(*WILLIAM HART*.)

Sworn to before me, this (19th) }
day of (*June*, 1902.) }

(*FRANK OTT*.)

(Seal.)

Notary Public (42),

(*New York*) Co.

(Similar acknowledgment by The James Realty Corporation.)

FORM No. 450.

Lease of Place of Business.

THIS AGREEMENT, made this (18th) day of (*March*.) one thousand nine hundred and (*seven*.) between (*Charles F. Bemis*.) as landlord and (*Arnold Benedict*) as tenant,

WITNESSETH, that the said landlord does hereby lease unto the said tenant, and the said tenant does hereby hire from the said landlord, the following described premises; (*situate, lying and being in the Borough of Manhattan, City, County and State of New York, beginning at a point distant one hundred feet from the corner formed by the intersection of the northerly side of 38th street with the westerly side of 6th avenue, and running thence (1) at right angles to 6th avenue, parallel with 38th street 100 feet, thence (2) at right angles to the first course and parallel to 6th avenue 25 feet, thence (3) at right angles to the second course and parallel to 38th street, 100 feet, thence (4) along 6th avenue 25 feet to the point or place of beginning*) to be used and occupied by the said tenant as a (*clothing and men's furnishing*) store, and

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for no other purpose, for the term of (*three*) years to commence on the (*first*) day of (*May*,) nineteen hundred and (*seven*,) (1907,) and to end on the (*thirtieth*) (30*th*) day of (*April*,) nineteen hundred and ten, (1910,) at the yearly rent of (*twelve thousand*) (\$12,000) dollars, payable in equal monthly payments in advance on the first day of each and every month during said term.

THE ABOVE LETTING is upon the following conditions, all and every one of which the tenant covenants and agrees with said landlord to keep and perform:

1st. The tenant shall pay the rent as aforesaid as the same shall fall due.

2d. The tenant shall take good care of the premises hereby leased, and shall, at his own cost and expense, make all repairs of whatever nature necessary to keep the premises in good condition, except such as may be necessitated by fire; and at the end or other expiration of the term of this lease shall deliver up said premises in good order and condition, damage by the elements excepted.

3d. The tenant shall promptly execute and comply with all laws, rules, orders, ordinances and regulations of the State and city government, and of any and all its departments and bureaus, or of any other competent authority applicable to said premises, for the correction, prevention and abatement of nuisances or other grievances, or concerning any other matter in, upon or connected with said premises during said term; and shall also promptly comply with and execute all rules, orders and regulations of the New York Board of Fire Underwriters for prevention of fires at his own cost and expense. If the tenant shall fail to comply with any of the foregoing requirements, the landlord may comply with the same for account of the tenant, and add the cost of so complying therewith to the rent next to become due under this lease and such cost shall become a part of said rent, and upon the failure of the tenant to pay the same, the landlord may elect to terminate this lease and the term hereby granted shall thereupon cease.

4th. The tenant shall not assign this agreement, or underlet or underlease the premises, or any part thereof, without the landlord's consent in writing; or occupy, or permit or suffer the same to be occupied for any business or purpose other than that above specified or for any business or purpose deemed disreputable, or extra hazardous on account of fire, under the penalty of damages and forfeiture of this lease, and the stipulations in this clause contained shall be deemed a condition, or if said property be transferred conditional limitations of this lease.

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5th. If, during the term of this lease, the demised premises are destroyed by fire or the elements, or partially destroyed so as to render said premises wholly unfit for occupancy, or if they shall be so badly injured that they cannot be repaired with reasonable diligence, within four months from the happening of such injury, then this lease shall cease and become null and void from the date of such damage or destruction, and the tenant shall immediately surrender the premises and all interest therein to the landlord, and shall pay rent only to the time of such surrender; and in case of destruction or partial destruction as above mentioned, the landlord may resume possession of the premises discharged of this lease, and may remove all parties therefrom; and if the premises shall be repairable within four months as aforesaid, then the landlord shall repair the same with all reasonable speed, and the rent shall cease until such repairs shall be completed; provided, however, that in case any portion of the premises shall, during the period of such repairs, be fit for occupancy by the tenant for the purpose for which these premises are demised, then the rent shall be equitably apportioned and paid for the part so fit for occupancy.

6th. The tenant shall allow the landlord, and his agents, to enter upon the premises, or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs or alterations therein as the landlord may see fit voluntarily to make for the safety or preservation thereof.

7th. The tenant shall allow the landlord, and his agents, to show the premises to persons wishing to hire or purchase the same, and during the three months prior to the expiration of the term hereby granted, to place in a conspicuous part of the exterior of the premises, notices offering the premises "To Let" or "For Sale," and will permit the same to remain thereon without hindrance or molestation.

8th. The tenant shall neither encumber nor obstruct the sidewalk, gutters, hallways or stairways, nor allow the same to be obstructed or encumbered in any manner.

9th. The tenant shall not place any signs of any kind whatsoever, at, in or about the entrance or at any other part of the premises, except at such place or places as may be indicated by the said landlord and consented to by him in writing.

10th. The landlord shall not be liable for any damage or injury by water, steam, gas or electricity which may be sustained by the said tenant or other persons, or for any other damage or injury

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resulting from the carelessness, negligence, or improper conduct on the part of any other tenant, or of any agent or employee, by whomsoever employed, or by reason of the breakage, leakage, or obstruction of the Croton water, gas or soil pipes, or of any other leakage in or about the said building.

11th. The tenant shall pay, when due, all charges regular and extraordinary that may be made for the rent or use of Croton water in the demised premises, and the cost of meters and the setting of same, and if not so paid, the same shall be added to the month's rent next to become due and be collectible therewith.

12th. No alterations, additions or improvements shall be made in or to the premises without the consent of the landlord in writing, and all additions and improvements made by the tenant shall belong to the landlord.

13th. In case of default in any of the covenants or conditions herein contained the landlord may resume possession of the premises either by force or otherwise. In case of such re-possession, or if the premises become vacant, or the tenant be dispossessed by summary proceedings, the landlord may re-let the premises for the remainder of the term for account of the tenant who agrees to make good any deficiency, including the expenses of the landlord in re-entering. The tenant expressly waives all rights to quit possession or terminate this lease under the statute (section 197, Real Property Law); and the tenant does further waive for himself and all persons claiming under him all right to redeem the premises (under sections 2256 and 2257, C. C. P. or otherwise) after a warrant to dispossess shall have been issued or after a judgment in an action of ejectment shall have been made or entered.

14th. The tenant hereby subordinates this lease to any mortgages which the landlord may from time to time place upon the premises, provided that the amount of such mortgages shall not exceed in the aggregate seventy-five per cent. of the actual value of the premises at the time when said mortgages are placed thereon, or, provided that, if the same be in substitution of the present mortgages on the premises and such present mortgages exceed said percentage, they do not exceed the amount of the present incumbrances, and such mortgages whenever recorded shall be superior and prior in lien to this lease, and the tenant agrees that he will execute any instrument which may be deemed necessary or desirable to further effect the subordination of this lease to any such mortgages and upon the tenant's refusal, after reasonable notice,

Guaranty Agreement.

to execute any such instruments the landlord may cancel this lease and the term hereby granted shall thereupon cease.

15th. The failure of the landlord to insist upon strict performance of any of the covenants or conditions of this lease or to exercise any option herein conferred in any one or more instances, shall not be construed as a waiver or relinquishment for the future of any such covenants, conditions or options, but the same shall be and remain in full force and effect.

IN CONSIDERATION AND UPON CONDITION that the aforesaid rents, covenants and agreements be all and severally paid and performed, without evasion or delay, the landlord covenants that the tenant may at all times during said term peaceably have and enjoy the demised premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

(CHARLES T. BEMIS.) [L. s.]

(ARNOLD BENEDICT.) [L. s.]

Sealed and delivered

in the presence of

(THOMAS ATKINS.)

(Acknowledgment.)

IN CONSIDERATION of the letting of the premises within mentioned by the landlord within described, and of the sum of one dollar to me in hand paid by the said landlord, the receipt of which is hereby acknowledged I do hereby become surety for the punctual payment of all the rent and the performance of all the covenants in the within written agreement mentioned to be paid and performed by (*Arnold Benedict*,) the tenant as herein specified; and if any default shall at any time be made herein I do hereby promise and agree to pay unto the said landlord in said agreement named the said rent, or any arrears thereof that may be due, and to fully satisfy the conditions of said agreement and to pay all damages that may accrue by reason of the non-fulfillment thereof, without requiring notice of default or proof of demand being made.

Given under my hand and seal the (18th) day of (*March*, 1907.)

(JOHN D. CORNROCK.) (SEAL.)

In presence of

(THOMAS ATKINS.)

(Acknowledgments.)

Guaranty Agreement.

THE TENANT named in the foregoing lease has deposited with the landlord therein named, simultaneously with the execution of said lease, the sum of two thousand dollars as security for the rent therein reserved and for the faithful performance by the tenant of each and every of the covenants, conditions and agreements in said lease contained during the entire term therein demised.

AND IT IS AGREED that the termination of said lease or of said term therein demised by act of law through summary proceedings or through ejectment or by re-entry or by taking possession of the premises by the landlord or by the surrender thereof by the tenant, shall not affect this security and shall not affect the covenants in said lease contained to pay any deficiency in the rent for the remainder of the term, upon the reletting thereof by the landlord, or upon his failure or inability to let the same.

IT IS FURTHER AGREED that if at any time the sum so deposited shall be decreased by the application by the landlord of the whole or a portion of said sum deposited as security for the payment of any rent in arrear, or to the payment of any loss sustained by the landlord through the breach by the tenant of any of the covenants or conditions in said lease contained, that in that event the tenant will pay to the landlord a sum sufficient to restore said security to its original amount, and upon the failure of the tenant to do so within five days after notice in writing from the landlord, the aforesaid lease and the term therein granted and the renewals thereof, if any there be, shall forthwith end and determine and the landlord may take possession of the premises and terminate said lease through summary proceedings or otherwise.

The landlord agrees that at the end of the term in said lease granted, the said deposit will be returned to the tenant with interest thereon at the rate of 4 per cent. per annum, provided the tenant shall have complied in all respects with the covenants and conditions of the said lease and the terms hereof.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 18th day of March, 1907.

(CHARLES T. BEMIS.) [L. s.]

(ARNOLD BENEDICT.) [L. s.]

In presence of
(THOMAS ATKINS.)

(Acknowledgments.)

Place Of Business.

FORM No. 451.

Lease of Place of Business.

THIS AGREEMENT

made the (30th) day of (*March*,) in the year one thousand nine hundred and (*seven*,) by and between (*William Thompson Company*,) a corporation created by and existing under the laws of the State of (*New York*,) party of the first part, and (*John Johnson*,) of the (*Borough of Manhattan, City, County and State of New York*,) party of the second part,

WITNESSETH:

That the party of the first part does hereby lease unto the party of the second part, and the party of the second part does hereby hire from the party of the first part, the following described premises:

(*ALL that certain lot, piece or parcel of land with the buildings and improvements thereon erected, situated, lying and being on the southerly side of Tenth Street, in the Borough of Manhattan, City, County and State of New York, distant one hundred (100) feet westwardly from the southwesterly corner of Tenth Avenue and said street; and thence running southwardly parallel with Tenth Avenue, ninety-eight (98) feet, to the center line of the block between Ninth and Tenth Streets; thence westwardly along said center line twenty-seven (27) feet four (4) inches; thence northwardly, parallel with Tenth Avenue ninety-eight (98) feet to the northerly side of Tenth Street; and thence eastwardly along said street twenty-seven (27) feet to the place of beginning,—said premises being known as number 514 West Tenth Street,*) for the term of (*seven years*) to commence on the (*first*) day of (*May*,) one thousand nine hundred and (*seven*,) and to end on the (*first*) day of (*May*,) one thousand nine hundred and (*fourteen*,) at the yearly rent or sum, (*for the first two years and eight months of said term, of forty thousand dollars, (\$40,000) and for the remainder*) of said term, (*commencing on the first day of May, one thousand nine hundred and ten, the yearly rental or sum of fifty thousand dollars, (\$50,000)*) to be paid in (*equal monthly*) payments in advance on the (*first*) day of (*each and every*) month during said term.

The above letting is upon the following conditions, all and every one of which the said party of the second part COVE-

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NANTS and AGREES with the party of the first part to keep and perform :

1. The party of the second part shall pay the specified rent at the times and in the manner provided.

2. The party of the second part, on or before the (*first day of May, one thousand nine hundred and seven,*) shall deposit with the party of the first part the sum of (*seven thousand dollars*) (\$7,000), or at his option, in lieu thereof, securities of a character acceptable to the party of the first part of the market value of (*seven thousand dollars*) (\$7,000); said sum or said securities to be held and retained by the party of the first part as and for security for the payment of the rent agreed to be paid hereunder and for the reimbursement of the party of the first part for any expense or damage incurred or suffered because of the failure of the party of the second part to keep and perform each and every of the covenants, conditions and agreements herein agreed by him to be kept and performed during the entire term hereby leased; and the said party of the first part, upon the determination of this lease, and when the said party of the second part, shall have in all respects complied with the covenants, conditions and agreements herein contained, if cash shall have been deposited, will repay to the said party of the second part, the said sum of (*seven thousand dollars*) (\$7,000,) together with interest thereon, at the rate of (*four*) (4) per cent. per annum, or, if securities shall have been deposited, deliver up the said securities so deposited, with the accretions; if, in accordance herewith, securities are deposited in lieu of cash, then it is also agreed that, if the market value of the aggregate of such securities shall at any time be less than (*seven thousand dollars*) (\$7,000,) then and in that event the party of the second part will immediately, upon written demand, deposit additional securities acceptable to the party of the first part, or cash, so that the principal fund of such security shall be restored to its original amount; and upon failure so to do, the party of the first part may, at its option, sell such securities at public or private sale, and the proceeds thereof shall be and remain as the security provided herein; and if the proceeds of the sale of such securities amount to less than (*seven thousand dollars*) (\$7,000,) or if the security deposited in accordance herewith shall be decreased by the application of the same, or any portion thereof, for the payment of any rent in arrear or to the payment of any loss sustained through the breach of any of the covenants and conditions herein

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contained, then and in either of said events, the party of the second part will, within (*five days*) after written demand, deposit with the party of the first part a sum sufficient to restore the principal fund of said security to its original amount; if the party of the second part shall deposit securities as herein provided, he may at any time substitute in lieu thereof the sum of (*seven thousand dollars*) (\$7,000) plus interest on said amount at and after the rate of (*four*) per centum per annum from the (*first*) day of (*September,*) one thousand nine hundred and (*seven*) to the date of such substitution, and in that event the party of the first part shall deliver to the party of the second part the securities so deposited, if same have not been sold as herein provided, with the accretions, and thereafter the sum so deposited shall constitute the security herein provided.

3. The said party of the second part shall punctually pay and discharge, when due, all rents or rates or meter charges for Croton or other city water which during the term hereby granted may be assigned or imposed upon or grow out and payable out of or for the premises known as number (*514 West Tenth*) street.

4. The said party of the second part shall take good care of the premises hereby leased and, at his own cost and expense, make all repairs of whatever nature and description, both inside and outside, which are or may become necessary or proper to make and keep the said premises in perfect condition; and the party of the first part, its agents and employees, may at all times enter to view said premises and to make any repairs which it or they may find necessary to make, to protect its interest in said estate and the cost of making such repairs shall be paid by the party of the second part upon demand.

5. The said party of the second part shall not assign this lease, nor let, underlet, nor sublet, the premises or any part thereof, without the written consent of the party of the first part; nor occupy nor use nor permit the same to be occupied or used for any business or purpose deemed extra hazardous on account of fire, under the penalty of forfeiture and damages.

6. The said party of the second part shall, at his own cost and expense, promptly observe and keep all laws, rules, orders, ordinances and regulations of the State and City Governments and any and all their departments and bureaus, and those of any other competent authority, applicable to said premises, as also all repairs and alterations which may be made thereon, as herein pro-

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vided; and also, at his own cost and expense, shall promptly comply with all laws, rules, orders, regulations and requirements of the Board of Fire Underwriters or of any similarly constituted body. Upon failure so to comply with any of the foregoing requirements, the party of the first part may comply with the same for account of the party of the second part, and the cost of such compliance shall be paid to the party of the first part upon demand.

7. The said party of the second part shall allow the said party of the first part or its agents to show said premises to persons for purpose of sale and hire; and on and after the first day of August next preceding the expiration of the term hereby granted, to place in a conspicuous part of the exterior of the premises notices offering the premises "To Let" or "For Sale," and will permit the same to remain thereon without hindrance or molestation.

8. The management and control of said premises, except as herein restricted, shall be exclusively in the hands of the party of the second part during said term and he shall keep the sidewalks abutting on the said premises free from all snow and ice and other obstructions.

9. The party of the first part shall not in any event be liable for any injury or damage to any property or to any person happening on or about said premises, no matter how occurring, unless due to its own negligence.

10. The party of the second part shall and will save and keep the party of the first part harmless and indemnified from all penalties, claims or demands that may be made against it by reason of any defect in the premises leased or the appurtenances thereto; or of any neglect or default in the keeping or maintaining of the same as herein provided; or of any failure by the party of the second part to keep, perform and observe each and every of the covenants, conditions and agreements herein contained on his part to be kept, performed and observed.

11. If the party of the second part shall fail, neglect, or refuse to pay any charge imposed or expense incurred or other sum required by him to be expended, paid or deposited, as the case may be, under the terms of this lease, then the amount of such charge or expense or sum required to be expended, paid or deposited, as the case may be, shall be added to and form part of the rent to become due under the terms of this lease on the first day of the month next ensuing the time when such sum shall have been assessed or imposed or required to be paid or deposited or de-

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manded; and the non-payment thereof shall have the same effect, and such proceedings may be taken by the party of the first part in reference thereto, as is herein provided in case of default in payment of the rent reserved by this lease.

12. In case the premises leased herein shall be partially damaged by fire or the elements, the same shall be repaired as speedily as possible by the party of the first part.

In case the premises shall be totally destroyed by fire or the elements, the party of the second part may, at his election, require that the said premises be rebuilt by the party of the first part or surrender the whole of the premises hereby leased. If he shall elect to require the said premises to be rebuilt, then and in that event he shall deliver to the party of the first part within twenty days after the destruction of such building a notice in writing to that effect, whereupon the party of the first part shall rebuild said premises; and from and after the date of said destruction the yearly rent herein reserved and agreed to be paid shall cease until such time as the said premises are rebuilt; and when the said premises are rebuilt, the full yearly rent herein reserved and agreed to be paid shall recommence.

The new building so erected shall contain at least as many floors as are in the present building, to wit: (*basement, store floor and four upper floors;*) and in no event shall the party of the second part under this lease be entitled to or occupy more floors than are in the present building.

In the event that the party of the second part shall not, within the time and in the method herein prescribed require the party of the first part to rebuild the said premises then this lease and the term herein granted shall determine and end and the party of the second part shall immediately surrender the whole of said premises and all interest therein to the party of the first part and shall pay rent within this term only to the date of such surrender; and the party of the first part may re-enter and repossess the whole of said premises, discharge this lease and remove all parties therefrom.

13. The party of the second part, at the determination of the term hereby granted either by lapse of time, forfeiture, or as herein provided, or otherwise, will quit and surrender the premises leased to the party of the first part, in perfect condition, reasonable use and wear thereof being allowed for; and all improvements and additions, alterations and repairs to or upon said premises, shall remain and be surrendered with the premises leased at the

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determination of this lease without disturbance, molestation or injury.

14. In case the party of the second part shall default in the payment of the rent or any part thereof, or of any other sum of money to be by him paid, under the terms of this lease, or in the performance and observance of any of the covenants and conditions herein contained or if the said premises or any part thereof shall become vacant or are abandoned during the said term, the party of the first part shall and may have possession of the same by summary proceedings or by any other lawful method; and shall and may re-enter the same and use such force for that purpose as it shall think fit without being liable for any prosecution therefor; and thereupon the party of the first part, in its own name, may re-let the said premises as the agent of the party of the second part, applying the avails thereof first to the payment of the expense incurred or paid in recovering possession, and then to the payment of the rent, and any other sum of money unpaid and required by this lease to be paid by the party of the second part.

If the party of the first part shall recover or take possession of the said premises as aforesaid and shall be unable to re-let the same or obtain sufficient rent therefor to make up the amount of rent hereby reserved and also any sum of money required by the terms hereof to be paid by the party of the second part, the party of the second part shall and will pay to the said party of the first part any and all loss or difference of rent for the residue of said term and any and all loss or deficiency of any other sum of money required by the terms hereof to be paid by him; and the security provided herein shall be held for all the purposes herein mentioned; and the party of the second part expressly waives all right to quit possession or terminate this lease under the statute (section 197, Real Property Law), and also, for himself and all persons claiming under him, expressly waives all right to redeem the premises (under sections 2256 and 2257, Code of Civil Procedure, or otherwise) after a warrant to dispossess shall have been issued or after a judgment in an action of ejectment shall have been made and rendered.

15. The party of the second part, at his own cost and expense, may make alterations in and upon the premises leased; before any alteration shall be made, the plans therefor shall be submitted to an architect designated by the party of the first part who shall determine if the proposed alterations are permanent improvements

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to the premises and shall fix the amount which, in his judgment, will be required to restore said premises if such alterations are made; and the party of the second part, upon depositing with the party of the first part security for the faithful performance of the covenant to restore said premises to their original condition, in the amount fixed by said architect and in form acceptable to the party of the first part, and the payment of the architect's charges, may make such alterations, and the party of the second part shall pay any additional insurance premium required to be paid by the party of the first part because of such alterations and, upon the determination of this lease or the expiration of the term hereby demised, he will, at his own expense, restore the premises leased to the condition same were in before alteration.

16. The said party of the first part will keep the said premises warmed by a heating apparatus from the tenth day of October, in the year, to the tenth day of May, following, excepting on Sundays and holidays, provided, however, that in the event that it shall be necessary or convenient to stop the heating apparatus or any thing appertaining thereto for repairs or alterations or because of accident, the party of the first part may stop the operation of such heating apparatus for such reasonable time as shall be necessary for the purpose above stated; and the party of the second part covenants and agrees to permit free access to that part of the building wherein is contained the heating apparatus and other machinery, and that ashes may be removed from the boiler room of said building through the basement thereof to the street and by way of the freight elevator therein.

17. The party of the second part hereby subordinates this lease to any mortgages which the party of the first part may from time to time place upon the premises, provided that the amount of such mortgages shall not exceed in the aggregate seventy-five per cent. of the actual value of the premises at the time when said mortgages are placed thereon and provided that if the same be in substitution of the present mortgages on the premises and such present mortgages exceed said percentage, they do not exceed the amount of the present incumbrances, and such mortgages whenever recorded shall be superior and prior in lien to this lease and the party of the second part agrees that he will execute any instrument which may be deemed necessary or desirable to properly effect the subordination of this lease to any such mortgages and upon the refusal of the party of the second part after reasonable

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notice to execute any such instruments the party of the first part may cancel this lease and the term hereby granted shall thereupon cease.

18. The failure of the party of the first part to insist upon strict performance of any of the covenants or conditions of this lease, or to exercise any option herein conferred in any one or more instances, shall not be construed as a waiver or relinquishment for the future of any covenants, conditions or options, but the same shall be and remain in full force and effect.

19. And the party of the first part, for itself, its successors and assigns, does covenant that the said party of the second part, his executors and administrators, upon paying the said yearly rent, and performing and observing the covenants, conditions and agreements on his part to be performed and observed, shall and may peaceably have, hold and enjoy the said premises for the term aforesaid.

20. And it is further understood and agreed that this agreement and lease and the covenants and agreements and conditions contained herein shall apply and inure to and are binding on the successors and assigns, and the legal representatives of the parties hereto, respectively.

IN WITNESS WHEREOF the party of the first part has caused these presents to be executed by its president in duplicate of even date and tenor, and its corporate seal, duly attested by its secretary, to be affixed hereto; and the party of the second part has hereunto set his hand and seal in duplicate of even date and tenor the day and year first above written.

(THOMAS JAMES.)

(As President of the [CORPORATE SEAL.]
WILLIAM THOMPSON COMPANY.

JOHN JOHNSON.) [L. S.]

(Acknowledgment.)

MORTGAGES.*

FORM No. 452.

Mortgage (Mortgage Tax Law Clause).

THIS INDENTURE, made the (5th) day of (*July*,) in the year nineteen hundred and (*five*,) between (*Martin Sumner*,) of (*the Borough of Manhattan, City of New York*,) hereinafter described as part(y) of the first part, and (*Norman M. Pullman*,) of (*the Borough of Brooklyn, City of New York*,) hereinafter described as part(y) of the second part.

Whereas, the said part(y) of the first part, by virtue of (*a certain bond or obligation, bearing even date herewith, is*) justly indebted to the said part(y) of the second part, in the sum of (*three thousand*) dollars, lawful money of the United States, secured to be paid, on the (*first*) day of (*July*,) in the year nineteen hundred and (*ten*,) together with the interest thereon, at the time and in the manner expressed in said bond or obligation.

It being thereby expressly agreed, that the whole of the said principal sum shall become due after default in the payment of interest, taxes or assessments as hereinafter provided.

Now this indenture witnesseth, that the said part(y) of the first part, for the better securing the payment of the said sum of money mentioned in the said bond or obligation with interest thereon, and also for and in consideration of one dollar paid by the said part(y) of the second part, the receipt whereof is hereby acknowledged, doth hereby grant and release unto the said part(y) of the second part, and to (*his heirs*) and assigns, forever, all

(Description.)

Together with all fixtures and articles attached to, or used in connection with said premises, all of which are declared to be covered by this mortgage — together with the appurtenances, and all the estate and rights of the party of the first part in and to said premises. To have and to hold the above granted premises unto the said part(y) of the second part, (*his heirs*) and assigns forever. Provided always, that if the said part(y) of the first part, or the heirs, executors or administrators of the part(y) of the first part, shall pay unto the said part(y) of the second part, (*his heirs, ad-*

* See Information To Obtain Before Drawing, page 9. Forms of Bond, page 765.

With Mortgage Tax Clause.

ministrators) or assigns, the said sum of money mentioned in the said bond or obligation and the interest thereon, at the time and in the manner mentioned in the said bond or obligation, then these presents and the estate hereby granted, shall cease, determine and be void.

And said part(y) of the first part covenants with the part(y) of the second part as follows:

First. That said part(y) of the first part will pay the indebtedness, as hereinbefore provided, and if default be made in the payment of any part thereof, the part(y) of the second part shall have power to sell the premises herein described, according to law. Said premises may be sold in one parcel, any provision of law to the contrary notwithstanding.

Second. That the part(y) of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the part(y) of the second part. And should the part(y) of the second part by reason of such insurance against loss by fire, as aforesaid, receive any sum or sums of money, such amount may be retained and applied by said part(y) of the second part toward payment of the sum hereby secured, or the same may be paid over either wholly or in part to the said part(y) of the first part, (*his heirs, administrators*) or assigns, to enable said party of the first part to repair said buildings or to erect new buildings in their place, or for any other purpose or object satisfactory to the said part(y) of the second part, without affecting the lien of this mortgage for the full amount secured thereby, before such damage by fire, or such payment over, took place.

Third. And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said part(y) of the second part after default in payment of interest for thirty days, or after default in the payment of any tax or assessment for thirty days, or immediately upon the actual or threatened demolition or removal of any building erected upon said premises.

Fourth. That the holder of this mortgage, in any action to foreclose it, shall be entitled, without notice and without regard to the adequacy of any security for the debt, to the appointment of a receiver of the rents and profits of said premises; and said rents and profits are hereby, in the event of any default or defaults in paying said principal or interest, assigned to the holder of this mortgage as further security for the payment of said indebtedness.

With Mortgage Tax Clause.

Fifth. That until the amount hereby secured is paid, the part(y) of the first part will pay all taxes, assessments and water rates which may be assessed or become a lien on said premises, and, in default thereof, the holder of this mortgage may pay the same, and the part(y) of the first part will repay the same with interest, and the same shall be a lien on said premises and secured by this mortgage.

Sixth. In the event of the passage after the date of this mortgage of any law of the State of New York, deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages or debts secured by mortgage for State or local purposes, or the manner of the collection of any such taxes, so as to affect this mortgage, the holder of this mortgage, and of the debt which it secures, shall have the right to give thirty days' written notice to the owner of said land requiring the payment of the mortgage debt, and it is hereby agreed that if such notice be given, the said debt shall become due, payable and collectible at the expiration of said thirty days.

Seventh. That the mailing of a written notice and demand by depositing it in any post office, station or letter box, inclosed in a post-paid envelope addressed to the owner of record of said mortgaged premises and directed to said owner at the last address actually furnished to the holder of this mortgage, or, in default thereof, directed to said owner at said mortgaged premises, shall be sufficient notice and demand in any case arising under this instrument.

Eighth. That the part(y) of the first part will execute any further necessary assurance of the title to said premises, and will forever warrant said title.

Ninth. The part(y) of the first part, or any subsequent owner of the premises described herein shall, upon request, made either personally or by mail, certify, in writing, to the part(y) of the second part or any proposed assignee of this mortgage, the amount of principal and interest that may be due on this mortgage, and upon the failure to furnish such certificate after the expiration of six days in case the request is made personally, or after the expiration of thirty days after the mailing of such request in case the request is made by mail, this mortgage shall become due at the option of the holder thereof.

With Mortgage Tax Clause.

Tenth. If the principal secured by this mortgage be not paid on its due date, then the principal sum shall not be payable by the part(y) of the first part nor by any owner of the mortgaged premises until the last day of the following month, and if not paid then said principal shall not be payable by the party of the first part nor by any owner of the mortgaged premises except upon the 30th day of June of any year thereafter; but any holder of this mortgage may elect at any time after such default that the whole principal sum shall be due and payable immediately and thereupon the holder of this mortgage may enforce the same as if the time when payment could be made had not been postponed.

IN WITNESS WHEREOF, the said part(y) of the first part has signed and sealed this instrument the day and year first above written.

(*MARTIN SUMNER.*) [SEAL.]

In the presence of

.....

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*5th*) day of (*July*), in the year nineteen hundred and (*five*), before me came (*Martin Sumner*), to me known to be the individual described in, and who executed the foregoing instrument, and acknowledged that (*he*) executed the same.

(*OLIVER GIBBS*),

Notary Public,
(*New York*) County.

With Second Mortgage Clause.

FORM No. 453.

Mortgage (where there is a prior mortgage).

THIS INDENTURE, made the (*eleventh*) day of (*December,*) in the year of our Lord one thousand nine hundred and (*two,*) between (*William E. Dean, unmarried,*) part(*y*) of the first part and (*Manhattan Mortgage Company,*) part(*y*) of the second part: the said part(*y*) of the first part being hereinafter known and designated as the mortgagor, and the said part(*y*) of the second part being hereinafter known and designated as the mortgagee.

Whereas, the said part(*y*) of the first part is justly indebted to the mortgagee in the sum of (*nine thousand*) (\$9,000) dollars, lawful money of the United States of America, secured to be paid by (*his*) certain bond or obligation bearing even date herewith, in the penal sum of twice the amount of the said indebtedness, conditioned for the payment of the said amount of indebtedness, as aforesaid, to the mortgagee, or assigns, at any time prior to the date next hereinafter mentioned on giving thirty days' notice, and failing such payment, then on the (*12th*) day of (*December,*) which will be in the year one thousand nine hundred and (*three,*) and interest thereon to be computed from the (*11th*) day of (*December, 1903,*) at and after the rate of (*five*) (*5*) per centum per annum, and to be paid semi-annually on the (*first*) days of (*June*) and (*December,*) in every year until the said principal sum shall be wholly paid.

It being thereby expressly agreed that the whole of the said principal sum shall become due after default in the payment of interest, taxes or assessments, as hereinafter provided.

Now this indenture witnesseth, that the mortgagor, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of the sum of one dollar, to the part(*y*) of the first part, in hand paid by the mortgagee, the receipt whereof is hereby acknowledged, does hereby grant and release unto the mortgagee, (*its successors,*) and assigns forever, all

(*Description.*)

Together with the appurtenances and all the estate and rights of the mortgagor in and to said premises and also all the rents and

With Second Mortgage Clause.

profits which the part(y) of the second part or (*its successors*,) legal representatives or assigns may take and receive at their option as hereinafter mentioned; to have and to hold the above-granted premises, and every part thereof with the appurtenances, unto the said mortgagee, (*its successors*) and assigns, forever.

Provided always, that if the said mortgagor, (*his*) heirs, executors, or administrators shall pay unto the said mortgagee, (*its successors*,) legal representatives, assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, together with any tax, assessment or premium of insurance which shall have been paid by the part(y) of the second part, then these presents and the estate hereby granted, shall cease, determine and be void.

And the said mortgagor covenants with the mortgagee as follows:

First. That the mortgagor will pay the indebtedness as hereinbefore provided and, if default be made in the payment of any part thereof, the mortgagee, (*its successors*,) legal representatives or assigns shall have power to sell the premises herein described according to law.

Second. That the mortgagor will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee. And should the mortgagee, by reason of any such insurance against loss by fire, as aforesaid, receive any sum or sums of money for any damage by fire to the said building or buildings, such amount may be retained and applied by said mortgagee toward payment of the amount hereby secured, or the same may be paid over either wholly or in part to the said mortgagor, (*his*) heirs or assigns, to enable said mortgagor to repair said buildings or to erect new buildings in their place, or for any other purpose or object satisfactory to the said mortgagee, without affecting the lien of this mortgage for the full amount secured thereby before such damage by fire, or such payment over, took place.

Third. And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said mortgagee, (*its successors*,) legal representatives or assigns after default in the payment of any instalment of principal or of interest for thirty days, or after default in the payment of any instalment of principal, tax or assessment for ninety days after notice and demand. In case of the actual or threatened demolition or removal

With Second Mortgage Clause.

of any building erected upon the said premises, or in case of a fire rendering the building on said premises untenable, the whole of said principal sum shall become due and payable at the option of the said mortgagee.

Fourth. That the mortgagor will execute any further necessary assurance of the title to said premises and will forever warrant said title.

Fifth. That if default shall be made in the payment of the principal sum mentioned in the condition of the said bond, or of the interest which shall accrue thereon, or of any part of either, at the respective times therein specified for the payment thereof, the said mortgagee shall have the right forthwith, after any such default, to enter upon and take possession of the said mortgaged premises, and to let the said premises, and receive the rents, issues and profits thereof, and to apply the same, after payment of all necessary charges and expenses, on account of the amount hereby secured, and said rents and profits are, in the event of any such default, hereby assigned to the mortgagee.

Sixth. That the mortgagee shall also be at liberty immediately after any such default, upon proceedings being commenced for the foreclosure of this mortgage, to apply for, and the mortgagee shall be entitled, as a matter of right, without consideration of the value of the mortgaged premises as security for the amounts due the mortgagee, or of the solvency of any person or persons liable for the payment of such amounts, and without notice to the mortgagor or any other person, to the appointment of a receiver of the rents and profits of the said premises.

Seventh. And the said mortgagor does further covenant and agree, that in default of the payment of all taxes, charges and assessments which may be imposed by law upon the said mortgaged premises, or any part thereof, that it shall and may be lawful for the said mortgagee, without notice to or demand from the mortgagor, to pay the amount of any such tax, charge or assessment, with any expenses attending the same, and any amount so paid the said mortgagor covenants and agrees to repay to the said mortgagee, with interest thereon, without notice or demand, and the same shall be a lien on the said premises, and be secured by the said bond and by these presents; and the whole amount hereby secured, if not then due, shall thereupon, if the said mortgagee so elect, become due and payable forthwith.

With Second Mortgage Clause.

Eighth. That the provision for notice and demand contained herein shall be deemed fulfilled by written notice to and demand on one or more of the persons who shall hold the record title to the said premises at the time said notice is given, personally served or mailed to such person or persons through the United States post office at his or their address to the mortgagee last known.

Ninth. And the said mortgagor further covenants and agrees that upon default in the payment of the interest or principal, or any part thereof, of or upon this or any prior mortgage upon the premises hereby conveyed, or any part thereof, the part(y) of the second part, (*its successors*,) legal representatives or assigns, shall have the right at its option to pay the said interest or principal, or any part thereof, and all expenses attached to such payment, and such amounts so paid, shall be a lien on the said premises, and be secured by the said bond and these presents; and at the further option of the part(y) of the second part to declare the principal sum secured by this mortgage due and payable immediately upon such default, and with the same force and effect and with the same rights and remedies to the part(y) of the second part as if the said principal sum secured by this bond and mortgage had become due and payable, according to the terms thereof, anything herein contained to the contrary notwithstanding.

IN WITNESS WHEREOF, the said mortgagor, has hereunto set (*his hand*) and (*seal*) the day and year first above written.

(*WILLIAM E. DEAN.*) (SEAL).

Signed, sealed and delivered
in the presence of

(*MORTIMER KENNEDY.*)

STATE OF NEW YORK, }
County of (*New York*), }^{ss.:}

On this (*eleventh*) day of (*December*, 1902,) before me personally appeared (*William E. Dean*,) to me known, and known to me to be the individual described in and who executed the foregoing mortgage, and (*he*) acknowledged that (*he*) executed the same.

(*MORTIMER KENNEDY,*)

Notary Public,
(*New York*) County.

Second Mortgage.

FORM No. 454.

Second Mortgage (Tax Assessment; Insurance Made Part of Principal).

THIS INDENTURE, made the (*fifth*) day of (*March*,) in the year nineteen hundred and (*six*,) between (*James Judson*,) of the (*Borough of Manhattan, City of New York*,) part(*y*) of the first part, and (*Cornelius Curzon*) of the (*Borough of Brooklyn, City of New York*,) part(*y*) of the second part.

WHEREAS, the said (*James Judson is*) justly indebted to the said part(*y*) of the second part in the sum of (*five thousand*) dollars, lawful money of the United States of America, secured to be paid by (*his*) certain bond or obligation, bearing even date herewith, conditioned for the payment of the amount of the said indebtedness to the part(*y*) of the second part, or the (*heirs*) or legal representatives or assigns of the said part(*y*) of the second part on the (*fifth*) day of (*March*, 1908,) with interest thereon at the rate of (5) per centum per annum, to be paid in semi-annual instalments on the (*fifth*) of every month of (*March*) and (*September*) thereafter ensuing until the whole is fully paid.

IT BEING THEREBY EXPRESSLY AGREED, that the whole of the said indebtedness shall, at the option of the said part(*y*) of the second part or the (*heirs*,) legal representatives or assigns of the said part(*y*) of the second part, become due after default in the payment of any instalment of principal or of interest, or after default in the payment of taxes, assessments or water rents, or in case of the foreclosure of any prior mortgage, or in the event of the actual or threatened, partial or total demolition or removal of any building erected on the premises herein described, as hereinafter provided.

NOW THIS INDENTURE WITNESSETH, that the part(*y*) of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with the said interest thereon, and also for and in consideration of one dollar paid by the part(*y*) of the second part the receipt whereof is hereby acknowledged, does hereby grant and release unto the part(*y*) of the second part, and to (*his*) heirs and assigns, forever, ALL (*that certain piece, parcel or lot of land situate in the Borough of Manhattan, City of New York, and bounded and described as follows:*)

Second Mortgage.

[Description.]

TOGETHER with the appurtenances, and all the estate and rights of the part(y) of the first part in and to said premises, and also in and to all the attachments, appliances, fittings, furnishings and renewals thereof and additions thereto, now in or upon or which shall be hereafter placed in or upon the above described premises, adapted to and necessary for the proper use and enjoyment of the same, all of which are hereby declared to be part of the freehold and covered by this mortgage and subject to the same laws and limitations applicable to real property.

TO HAVE AND TO HOLD the same unto the part(y) of the second part, (*his*) heirs and assigns, forever.

PROVIDED ALWAYS, that if the part(y) of the first part, (*his*) heirs, executors, administrators or assigns, shall pay unto the party of the second part, or the (*heirs*,) legal representatives or assigns of the same, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, then these presents, and the estate hereby granted, shall cease, determine and be void. And the said (*James Judson, party of the first part does*) covenant with the part(y) of the second part as follows:

First. That (*he*) will pay the indebtedness as hereinbefore provided, and if default be made in the payment of any part thereof, the part(y) of the second part shall have power to sell the premises herein described, according to law.

Second. That (*he*) will keep the buildings on the said premises insured against loss by fire, for the benefit of the part(y) of the second part.

Third. That (*he*) will execute or procure any further necessary assurance of the title to said premises, and will forever warrant said title.

AND IT IS HEREBY EXPRESSLY AGREED that the whole of said indebtedness shall, at the option of the part(y) of the second part, or the (*heirs*,) legal representatives or assigns of the said part(y) of the second part become due, after default in the payment of any instalment of principal, or after default for twenty days in the payment of interest, or after default for sixty days, in the payment of any tax, assessment or water rent which may be levied or imposed on said premises, or after default for

Second Mortgage.

twenty days in the payment of any instalment of principal or of interest on any mortgage which may be a prior lien on said premises; or immediately after any action or proceeding shall have been instituted for the foreclosure of any such prior mortgage; or in the event of the actual or threatened, partial or total demolition or removal of any building erected upon said premises.

AND IT IS FURTHER AGREED that the said part(y) of the second part, or the (*heirs*,) legal representatives or assigns of the said part(y) of the second part, after default in the payment of interest on any such prior mortgage, or in case any action or proceeding shall have been instituted for the foreclosure of any such prior mortgage, or after default in the payment of any tax, assessment or water rent which may be imposed upon said premises, may, without notice or demand, pay such interest, tax, assessment or water rent with interest and penalties accrued thereon, and the costs and expenses of any such action or proceeding, and add the amount so paid to the amount of said bond, or obligation, and the same shall be collectible as if it were a part thereof.

AND IT IS FURTHER AGREED that if default be made in any of the conditions, covenants or agreements of said bond or obligation, the part(y) of the second part or the (*heirs*,) legal representatives or assigns of the same, upon a complaint filed or other proper legal proceedings commenced for the foreclosure of this mortgage, shall be entitled, as a matter of right and without regard to the value of said premises, or the solvency or insolvency of any person or persons or corporation obligated for the payment of the said indebtedness, and without notice, to the appointment by any competent court or tribunal of a receiver of the rents, issues and profits of said premises, with the usual powers of such receivers, and said rents, issues and profits are in the event of such default, assigned to the part(y) of the second part as further security for the payment of the said indebtedness.

AND IT IS FURTHER agreed that should the part(y) of the second part, or the (*heirs*,) legal representatives or assigns of the the said part(y) of the second part, by reason of any policy of insurance, receive any payment of moneys for damage by fire to the said buildings, such moneys may be retained and applied by the latter towards payment of the amount hereby secured, or, at the latters option, the same may be paid over, either wholly or in part, to the then owner or owners of the said premises for the purpose of repairing said buildings, or erecting new buildings in their

Second Mortgage.

place, or for any other purpose satisfactory to the part(y) of the second part, or the (*heirs*,) legal representatives or assigns of the said part(y) of the second part, without affecting the lien of this mortgage for the full amount secured thereby before such damage by fire, or such payment ever took place.

AND IT IS FURTHER AGREED that the part(y) of the first part or any subsequent owner or owners of the premises herein described, upon request made in writing, sent to the said part(y) of the first part or any subsequent owner or owners of said premises by registered mail directed to the last address furnished to the part(y) of the second part or the successors in interest of the said part(y) of the second part or in default of the furnishing of such address directed to the above described premises, shall duly execute, acknowledge and deliver the usual certificate certifying to any proposed assignee of this mortgage the amount of principal and interest that may then be unpaid thereon; and upon the failure to furnish such certificate within fifteen days after the mailing of such notice the amount then remaining unpaid on this mortgage and the bond accompanying the same, shall, at the option of the holder thereof, become forthwith due and payable.

IN WITNESS WHEREOF, the part(y) of the first part (*has*) hereunto set (*his hand*) and (*seal*) the day and year first above written.

(JAMES JUDSON.) [L. s.]

In the presence of

.....

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On the (*fifth*) day of (*March*,) in the year nineteen hundred and (*six*,) before me personally came (*James Judson*,) to me personally known, and known to me to be the individual described in, and who executed the foregoing instrument, and (*he*) duly acknowledged to me that he executed the same.

(ARTHUR ASTON,)

Notary Public,

(*New York*) County.

POWERS OF ATTORNEY.

FORM No. 455.

Power of Attorney — Short Form.

KNOW ALL MEN BY THESE PRESENTS, that the (*Tompkins Machine Company, a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business in the City of Buffalo, New York,*) does hereby make, constitute and appoint (*Austin Baker,*) of (*the Borough of Manhattan, City of New York,*) its true and lawful attorney for it and in its name to (*receive any dividends which are or shall become payable on any of the stock standing in the name of the Tompkins Machine Company on the books of the Cooper Engine Company, of New York, and to give receipt therefor.*)

(*TOMPKINS MACHINE COMPANY,*)

By (*Alvin Tompkins,*
Treasurer,)

Attest:

(*FRANK FOSTER,*)

(Seal.)

Secretary.

(*Acknowledgment.*)

FORM No. 456.

Power of Attorney — To Manage Business and Real Property.

KNOW ALL MEN BY THESE PRESENTS, that I, (*Herbert C. Morton,*) of the (*Borough of Brooklyn, City of New York, being about to depart from the City of New York for a period of eighteen months,*) have made, constituted and appointed, and by these presents do make, constitute and appoint (*Frederick Morton*) my true and lawful attorney in fact, for me and in my name, and to my use, (*during my absence from the City of New York,*) to ask, demand, sue for, recover and receive all manner of goods, chattels, debts, rents, interest, sums of money and demands whatsoever, due or hereafter to become due and owing, or belonging to me, on account of the business now carried on by me as (*a whole.*

To Manage Business.

sale dealer in leather and findings,) at (No. 5 Dey street, in the Borough of Manhattan, City of New York,) and to make, give and execute acquittances, receipts, releases or other discharges for the same, whether under seal or otherwise, and to make, execute, indorse, accept and deliver in my name or in the name of my said attorney all checks, notes, drafts, warrants, acknowledgments, agreements and all other instruments in writing, of whatsoever nature, as to my said attorney may seem needful for the carrying on of the said business; and also for me and in my name and stead to employ all workmen, clerks, assistants and servants necessary and proper to enable my said attorney more effectually to conduct and carry on my said business, and to discharge any and all such workmen, clerks, assistants or servants, and to do, execute and perform and finish for me, in my name and stead, all and singular those things which shall be necessary and expedient, or which my said attorney shall judge necessary and expedient in and about, for or concerning my said business; and to enter into and take possession of any lands, real estate, tenements, houses, stores or buildings, or parts thereof, belonging to me, that may become vacant or unoccupied, or to the possession of which I may be or may become entitled, and to receive and take for me and in my name and to my use all or any rents, profits or issues of any real estate to me belonging, and to let the same in such manner as to my attorney shall seem needful and proper, and from time to time to renew leases, (*but not for a period extending beyond the first day of May in the year one thousand nine hundred and five;*) and also to execute and deliver all deeds, leases, mortgages and writings in that behalf requisite and necessary, and for me and in my name to commence, and prosecute any suits or actions or other legal proceedings for the recovery of possession of any of my lands or for any goods, chattels, debts, duties, demands, cause or thing whatsoever, due or to become due or belonging to me, and to prosecute and follow and discontinue the same, if he shall deem proper, and for me and in my name to take all steps and remedies necessary and proper for the conduct and management of my said business, and for the recovery, receiving, obtaining and holding possession of any lands, tenements, rents or real estate, goods and chattels, debts, interest, demands, duties, sum or sums of money or any other thing whatsoever, that is, are or shall be by my said attorney thought to be due, owing, belonging to or pay-

 To Borrow Money.

able to me in my own right or otherwise; and also for me and in my name and stead to appear, answer and defend in all actions and suits whatsoever which shall be commenced against me; and also for me and in my name to compromise, settle and adjust, with each and every person or persons, all actions, accounts, dues and demands, subsisting or to subsist between them or any of them, and in such manner as my said attorney shall think proper; and for the better doing, executing or performing of any or all of the premises, I do hereby further give unto my said attorney full power to constitute, appoint and authorize in his place and stead, and as his substitute, one or more attorney or attorneys, for me, with full power of revocation, hereby giving to my said attorney power and authority to do, execute, and perform and finish for me and in my name all and singular those things which shall be expedient and necessary, or which my said attorney shall judge expedient and necessary in and about, for or concerning the premises, or any of them, as fully as (I,) the said (*Herbert C. Morton,*) could do if personally present, hereby ratifying and confirming whatever my said attorney or his substitute shall do or cause to be done in, about or concerning the premises, and any part thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this (*fifteenth*) day of (*September,*) one thousand nine hundred and (*two.*)

(*HERBERT C. MORTON.*) (SEAL.)

(Acknowledgment.)

FORM No. 457.

Power of Attorney — By a Partnership, to Borrow Money.

KNOW ALL MEN BY THESE PRESENTS, that we, (*Benjamin Müller, Aron Müller and Gabriel Müller, composing*) the firm of (*Aron Müller & Sohn,*) of (*Halberstadt, Germany,*) have made, constituted and appointed, and by these presents do make, constitute and appoint (*Rudolf Conried,*) of (*the City, County and State of New York,*) our and each of our true and lawful attorney in fact, for us in the name of the said firm to open an account in the name of (*Aron Müller & Sohn,*) with the (*Second National Bank,*) of (*New York,*) to borrow money in the name of said firm from said (*Bank,*) and to indorse and

To Borrow Money.

deposit therewith as collateral to such loans, warehouse receipts, bills of lading, storage receipts, and refinery certificates, and in connection therewith to sign, indorse, draw, accept, make, execute and deliver all such notes, checks, bills of exchange and other contracts or instruments in writing with or without seal and to deposit collateral therewith and convey the title thereto to said (*Bank*,) and also to sign our firm name as attorney to any transfer of any stocks, bonds or other securities whatsoever or agreements or papers, or paper-writings or evidences of debt, or property in any way connected with or belonging to our said business, and to do any act or acts or to make any contract or contracts or sign any paper or papers connected with (*the American branch of*) our said business or in which it shall be necessary to sign the name of our said firm and to buy and sell exchange; to negotiate notes, drafts or bills of exchange and to provide for the security of notes, bills or other obligations discounted by said (*Bank*) on behalf of said firm and in the name of said firm to deposit security with said (*Bank*) against such discounts; and to borrow money against the stocks and bonds of said firm; to sign any paper or papers in connection therewith or in which it shall be necessary to sign the name of our said firm; it being intended to give, and hereby giving and granting unto our said attorney power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as we might or could do if personally present; hereby ratifying and confirming all that our said attorney shall do or cause to be done by virtue hereof; and any such notes, checks, bills of exchange, contracts or instruments, stocks, bonds or securities or other paper of whatsoever nature signed, indorsed, drawn, accepted, made, transferred, executed or delivered by our said attorney shall bind and are hereby ratified and confirmed by the undersigned.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the (*fourth*) day of (*June*,) in the year one thousand nine hundred and (*four*.)

(*BENJAMIN MULLER*,) (SEAL.)
 (*ARON MULLER*,) (SEAL.)
 (*GABRIEL MULLER*,) (SEAL.)

Sealed and delivered
 in the presence of

(*JONATHAN EDWARDS*.)

To Borrow Money.

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On this (*4th*) day of (*June*, 1904,) before me personally appeared (*Gabriel Müller*,) to me known and known to me to be the individual who executed the above instrument as a member of the firm of (*Aron Müller & Sohn*,) who, being by me duly sworn, did depose and say: That he resides in the (*City of Halberstadt, in the Empire of Germany*;) that he is a member of the above-named firm of (*Aron Müller & Sohn*;) that he executed the foregoing power of attorney on behalf of said firm and as a member thereof; that he was authorized to execute the same, and he acknowledged to me that he had executed the same on behalf of said firm for the purposes therein stated.

(*JOSEPH KEENE*,)

Notary Public,

(*N. Y.*) Co.

Bankruptcy.

FORM No. 458.

Bankruptcy — General Power of Attorney in Fact, by Partnership.
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE (*Eastern*) DISTRICT OF (*New York*.)

In the Matter
of
(*RALPH JUDSON*,)
Bankrupt.

To (*Oliver James, William Henry and Austin Shaw, composing the firm of James, Henry & Shaw, attorneys,*) or any of them,
or

We, (*Henry Weston*) and (*Alfred James, both of the City of Poughkeepsie,*) in the County of (*Dutchess*) and State of (*New York,*) composing the firm of (*Weston & James,*) do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said court in said matter, or at such other place and time as may be appointed by the court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof, may be held, and then and there from time to time, and as often as there may be occasion, for us and in our name to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of the said bankrupt, and for us to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due us under any composition, and for any other purpose in our interest whatsoever, with full power of substitution.

Bankruptcy.

IN WITNESS WHEREOF, we have hereunto signed our names and affixed our seals the (*fifth*) day of (*April*, A. D., 1905.)

(HENRY WESTON,) (SEAL.)

(ALFRED JAMES.) (SEAL.)

UNITED STATES OF AMERICA, }
(*Southern*) District of (*New York*), } ss.:

On this (*fifth*) day of (*April*, 1905,) before me personally appeared (*Henry Weston*,) to me known and known to me to be the individual who executed the foregoing instrument as a member of the firm of (*Weston & James*,) who, being by me duly sworn, did say: That he resides in (*the City of Poughkeepsie, New York*;) that he is a member of the above-named firm of (*Weston & James*;) that he executed the foregoing letter of attorney in behalf of said firm for the purposes therein mentioned, and that he was authorized to execute the same.

(ARTHUR EASTON,)

Notary Public,

(*New York*) County.

FORM No. 459.

Bankruptcy — Special Power of Attorney in Fact.

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE (*Southern*) DISTRICT OF (*New York*.)

In the Matter
of
(CHARLES P. LAWSON,) Bankrupt.

In Bankruptcy.

To (*James Vernon*, or *Alfred Benjamin*,) or (.....):

The (*American Refining Company*) hereby authorizes you, or any one of you, to attend the meeting of the creditors in this matter, advertised or directed to be holden at (*No. 115 Broadway*,

Bankruptcy.

Borough of Manhattan, City of New York,) on the (*fifteenth*) day of (*May, 1905,*) before (*William H. Willis,*) Esq., referee, or any adjournment thereof, and then and there, and from time to time, as often as may be necessary, for it and in its name to vote for or against any proposal or resolution that may be lawfully made or passed at such meeting or adjourned meeting, and in the choice of trustee or trustees of the estate of the said bankrupt.

(*AMERICAN REFINING COMPANY,*)

By (*Frederick Warde,*)

(*President.*)

Attest:

(*ANTHONY POLLOCK,*)

(*SEAL.*)

Secretary.

(Acknowledgment.)

SATISFACTION PIECES.

FORM No. 460.

Satisfaction of Mechanic's Lien.

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

(*I*,) (*Thomas Wentworth*,) of (*724 Lexington avenue, in the Borough of Manhattan, City of New York*,) do hereby certify, that a certain mechanic's lien, filed in the office of the clerk of the County of (*New York*,) on the (*30th*) day of (*August*,) one thousand nine hundred and (*three*,) at (*eleven*) o'clock (*20 minutes*,) in the (*fore*)noon, in favor of (*Thomas Wentworth*,) claimant, against the building and lot situate on the (*north*) side of (*East 54th*) street, (*in the Borough of Manhattan, City of New York*,) and known as No. (*324*,) in said street, for the sum of (*\$764 59/100*,) claimed against (*James Robinson*,) as owner, and (*Patrick Mullen, as contractor*,) is paid and satisfied, and (*I*) do hereby consent that the same be discharged of record.

WITNESS, (*my*) hand, this (*5th*) day of (*January, 1904*.)
(*THOMAS WENTWORTH*.)

STATE OF NEW YORK, }
County of (*New York*,) } ss.:

On this *5th* day of *January*, one thousand nine hundred and *four*, before me personally came (*Thomas Wentworth*,) to me known, and known to me to be the individual described in, and who executed the above certificate, and (*he*) duly acknowledged to me that he executed the same.

(*SIDNEY ADAMS*,)
Notary Public,
(*New York*) County.

Mortgage.

FORM No. 461.

*Satisfaction of Mortgage.

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

(*I*) do hereby certify, that a certain indenture of mortgage bearing date the (*eleventh*) day of (*December*), in the year one thousand nine hundred (*and two*), made and executed by (*William E. Dean*), of (*the Borough of Manhattan, in the City of New York*), to me (*John Bowers of the same Borough and City*), and duly recorded in the office of the (*Register*) of the County of (*New York, in Block Series, Mortgages, Section 4, Liber 126*) page (*275*), on the (*twelfth*) day of (*December*), in the year one thousand nine hundred and (*two*), at (*ten*) o'clock (*seventeen*) minutes in the (*fore*)noon and indexed in (*block*) index of mortgages, (*in section 4, block 2,640, on the land map of the City of New York*), is paid, and (*I*) do hereby consent that the same be discharged of record.

Dated the (*twenty-fifth*) day of (*April*, 1905.)

(*WILLIAM E. DEAN.*)

Signed in the presence of

(*WALTER BURT.*)

STATE OF NEW YORK, }
 County of (*New York*), } ss.:

On this (*twenty-fifth*) day of (*April*), in the year of our Lord one thousand nine hundred and (*five*), before me, the undersigned, personally came and appeared, (*William E. Dean*), to me known and known to me to be the individual described in and who executed the above certificate, and thereupon (*he*) duly acknowledged to me that he executed the same.

(*ALFRED LANNY,*)

Notary Public,

(*New York*) County.

* In cities of the first class the original mortgage must be produced for cancellation of signature or an order under Ch. 289, L. 1907, must be produced.

Mortgage — After Assignment.

FORM No. 462.

Satisfaction of Mortgage Which Has Been Assigned.

STATE OF NEW YORK, }
County of (*New York*), } ss.:

(*I, William Winter,*) of the (*Borough of Manhattan, City of New York,*) DO HEREBY CERTIFY: That a certain Indenture of mortgage bearing date the (*10th*) day of (*May*), in the year one thousand nine hundred (*and one*) made and executed by (*Frank Brown, and Mary, his wife,*) of the (*Borough of Manhattan, City of New York,*) to (*Maria Morrison*) of (*the same Borough and City,*) and duly recorded in the office of the (*Register*) of the County of (*New York*), in Block Series, Mortgages, Section (8,) Liber (120,) Page (216,) and indexed under Block Number (2140) on the land map of the (*City of New York*), on the (*10th*) day of (*May*), in the year one thousand nine hundred (*and one*), at (*three*) o'clock, (*forty*) minutes in the (*after*)noon, and which said mortgage was duly assigned to me by the said (*Maria Morrison*), the mortgagee above named by assignment dated the (*10th*) day of (*May*), in the year (1902,) and recorded in the office of the (*Register*) of the County of (*New York*) afore-said, in (*Block Series, Section 8,*) Liber (128) of Mortgages, Page (372,) on the (*11th*) day of (*May, 1902,*) is fully paid, satisfied and discharged, and do hereby consent that the same be discharged of record.

Dated, the (*15th*) day of (*May, 1905.*)

Signed in the presence of

(*WILLIAM WINTER.*)

STATE OF NEW YORK, }
County of (*New York*), } ss.:

On this (*15th*) day of (*May*), one thousand nine hundred and (*five*), before me personally came (*William Winter*), to me known and known to me to be the individual described in, and who executed the above certificate, and he thereupon duly acknowledged to me that he executed the same.

(*RALPH RIDER.*)

Notary Public,

(*New York*) County. No. (47.)

WILLS.

FORM No. 463.

Short Will — Devising and Bequeathing Entire Estate to Wife.

I, (*David Jones*) of (*the Borough of Kings, in the City of New York,*) do make, publish and declare this to be my last will and testament, hereby revoking all wills and codicils by me at any time heretofore made.

I.

I devise and bequeath all the estate and effects whatsoever, both real and personal, to which I may be entitled, or which I may have power to dispose of at my decease, unto my wife, absolutely; and I appoint her sole executrix of this my will and guardian of my infant children during their respective minorities; and I direct that she shall not be required to give any bond or security whatsoever any law to the contrary notwithstanding.

In witness whereof I have hereto subscribed my name at the end hereof and hereto set my hand and seal this (15th) day of (*March,*) in the year nineteen hundred and (*four.*)

(*DAVID JONES.*) (SEAL.)

Signed, sealed, published and declared by (*David Jones,*) the testator as and for his last will and testament in the presence of us who, at his request and in his presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses thereto.

(*WILLIAM SARD,*)

(10 East Fortieth Street,)

(Borough of Manhattan,)

(New York City.)

(*THOMAS CARTER,*)

(78 Fifth Street,)

(Borough of Manhattan,)

(New York City.)

Short Form.

FORM No. 464.

Short Will.

I, (*Miles Beacher, of the City of New York,*) do make, publish and declare this my last will and testament, and do hereby revoke all former wills by me made.

1. I direct that all my just debts and funeral expenses be paid as soon after my death as may be practicable.

2. I give and bequeath all my (*wearing apparel*) to (*James Bell,*) if he shall be in my service at the time of my death.

3. All the rest, residue and remainder of my estate, real and personal, including the property bequeathed to (*James Bell*) in case of legacy to him shall for any reason lapse, I give, devise and bequeath to my nieces and to be divided between them equally, share and share alike; provided, however, that if either of my said nieces shall predecease me, leaving lawful issue her and me surviving, then and in that event such issue shall together take the share its parent would have taken under this will had such parent survived me; and provided further that if either of my said nieces shall predecease me, leaving no lawful issue her and me surviving, then the niece who shall survive me or the lawful issue of the niece who shall have died leaving lawful issue her and me surviving, if both my nieces shall then be dead, shall take the whole of my residuary estate.

4. I nominate and appoint my friends (*Augustus Moore*) and (*John Manning,*) and the survivor of them, executors and executor of this my will.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this (*eighteenth*) day of (*January,*) one thousand (*eight hundred and ninety-seven.*)

MILES BEACHER, (SEAL.)

Signed, sealed, published and declared by (*Miles Beacher,*) the testator, as and for his last will and testament in the presence of us, who at his request, and in his presence, and in the presence of each other have hereunto subscribed our names as witnesses.

THEODORE E. SMITH,

101 West 153rd street, N. Y. City.

CHARLES F. CAMP,

169 10th avenue, N. Y. City.

FORM No. 465.

Common Form of Will.

I, (*James Lyon,*) of the (*City, County and State of New York, Borough of Manhattan,*) husband of (*Mary Lyon,*) of the same place, being of sound and disposing mind and memory and mindful of the uncertainty of human life and intending to dispose of all my property of whatsoever kind and nature upon my death, do hereby make, publish and declare this to be my last will and testament, hereby revoking all other wills and codicils by me at any time heretofore made.

ITEM

FIRST. I direct that my funeral expenses and just debts be paid by my executors as soon after my decease as is practicable.

ITEM

SECOND. I give and bequeath unto my friend (*Franklin Barrett,*) my (*author's copy of the first edition of "Spring," by Jonathan Jones, now in my library.*)

ITEM

THIRD. I give and bequeath unto my (*niece, Mabel Jones,*) of (*Newark, New Jersey,*) daughter of my sister (*Arabel Lyon Jones,*) the sum of (*ten thousand*) (10,000) dollars.

ITEM

FOURTH. I give and bequeath unto my (*nephew, Thomas Lyon*) of (*New York City, son*) of my late brother (*Peter Lyon,*) the sum of (*fifty thousand*) (50,000) dollars.

ITEM

All the rest, residue and remainder of my property and estate, as well real as personal, and wheresoever situated, which at the time of my death shall belong to me or be subject to my disposal by will, I give, devise and bequeath unto (*my beloved wife, Mary Lyon,*) absolutely and in fee-simple to (*her*) and (*her*) heirs, executors, administrators and assigns forever, according to the nature of the property.

Common Form.

IN WITNESS WHEREOF, I have hereunto subscribed my name at the end hereof and sealed these presents, and do publish and declare the foregoing as and for my last will and testament, this (23rd) day of (*January*,) in the year of our Lord one thousand nine hundred and (*seven*.)

(*JAMES LYON*.) [SEAL.]

Witnesses:

(*JOHN JOHNSON*,)
(*FREDERICK WATT*,)
(*AMOS BUDD*.)

ATTESTATION CLAUSE.

On this (23rd) day of (*January*,) nineteen hundred and (*seven*,) (*James Lyon*,) the above-named testator, in our presence subscribed and sealed the foregoing instrument, consisting of two pages, and at the time of such subscription published and declared the same to be his last will and testament, and thereupon we, at such time at the request of the above-named testator, and in his presence, and in the presence of each other, signed our names thereto as attesting witnesses.

(*JOHN JOHNSON*,)
(271 West One Hundred and Eighty-third Street,) (New York City.)
(*FREDERICK WATT*,)
(2 Washington Square,) (New York City.)
(*AMOS BUDD*,)
(2 State Street,) (Brooklyn, N. Y.)

FORM No. 466.

Common Form of Will.

I, (*John Tuck*,) of the (*City, County and State of New York, Borough of Manhattan*,) husband of (*Caroline Tuck*,) of the same place, being of sound and disposing mind and memory and mindful of the uncertainty of human life, and intending to dispose of all my property of whatsoever kind and nature upon my death, do hereby make, publish and declare this to be my last will and testament, hereby revoking all former wills and codicils by me at any time heretofore made.

Common Form.

ITEM.

Debts and
funeral ex-
penses.

FIRST. I direct that my funeral expenses and just debts be paid by my executors as soon after my decease as is practicable.

ITEM.

Specific
legacy.

SECOND. I give and bequeath unto my brother (*James Tuck*,) my gold watch, which formerly belonged to our father, and the portrait of our father, and the portrait of our mother, now in our residence.

ITEM.

General
legacy.

THIRD. I give and bequeath unto my nephew (*Frederick White*,) the son of my sister, (*Mary White*,) of (*Mechanicville, New York*,) the sum of (*ten thousand*) dollars.

ITEM.

FOURTH. I give and bequeath unto my friend (*Elmer Leeds*,) of (*New York City*,) the sum of (*five thousand*) dollars.

ITEM.

Residuary
legacy.

FIFTH. All the rest, residue and remainder of my property and estate, as well real as personal, and wheresoever situated, which at the time of my death shall belong to me or be subject to my disposal by will, I give, devise and bequeath to my trustees hereinafter named in trust, nevertheless, to invest the same and to keep the the same invested, and to receive the rents, issues, income and profits therefrom, and after defraying all taxes and other lawful charges upon the same, to pay the net income thereof to the use of my wife, (*Caroline*,) during her life.

Legacy in
lieu of dower.

The provision herein to my said wife as aforesaid I hereby declare is intended to be and is so given to her in full satisfaction and in lieu of and for her dower and thirds, which she may or can in any wise claim or demand out of my estate.

ITEM.

SIXTH. Upon the death of my said wife, (*Caroline*,) I direct my trustees to divide the said estate so held in trust into as many shares as I shall have left children me surviving, and I give, devise and bequeath one of each of the said shares unto each of my said children respectively, absolutely, and in fee-simple absolute.

Common Form.

ITEM.

SEVENTH. I hereby authorize and empower my executors and trustees, or the survivor or survivors, successor or successors, or the one, or those, thereof, who shall qualify and shall be executor and trustee or executors and trustees for the time being, of this my last will and testament, if, in his or their discretion, it shall seem expedient to retain any of my property in the same form of investment in which it may be at the time of my death, any law to the contrary notwithstanding. ^{Power to continue investments.}

And I hereby declare, and it is my will, that my trustees, or those who may be acting, or their successor or successors, shall not be restricted to the investments provided by law in which executors or trustees may invest, but shall have full power and authority to invest in any securities, stocks, bonds, or other investments which in his or their judgment are safe, and for the best interest of my estate, and that all such property, whether in the original or the converted state, shall be subject to the powers, provisions, regulations and trusts herein contained.

ITEM.

EIGHTH. It is my will, and I direct, that my executors and trustees herein named, or either of them, shall not be required to give any bond or security whatsoever, any law to the contrary notwithstanding.

ITEM.

NINTH. I hereby nominate, constitute and appoint my brother ^{Power of sale.} (*Raphael Tuck,*) to be executor and trustee, and my friend (*William Crow,*) of (*New York City,*) to be executor and trustee of this my last will and testament, hereby authorizing and empowering them, or the survivor or survivors, successor or successors, or the one, or those thereof, who shall qualify, and shall be executor and trustee or executors and trustees for the time being of this my last will and testament, if in his or their discretion it shall seem expedient, to sell either at public or private sale and at such times and in such manner and upon such terms and conditions as he, or they may deem most advantageous and for the best interest of my estate, the whole or any part of the real estate of which I may die seized or possessed, or any interest therein, and to execute and deliver any and all conveyances, deeds or other instruments that may be necessary or proper to transfer said property or to carry out the intention of this provision.

Common Form.

Power to
mortgage
and lease.

And I further give and grant unto my said trustees, or those who may be acting for the time being, or their successor or successors, full power and authority to mortgage or lease any and all of my real estate, or any interest therein on any terms and in any manner as he, or they, in their discretion, shall deem for the best interests of my estate, and I authorize and empower him or them to execute and deliver good and sufficient instruments therefor to carry out the intention of this provision.

ITEM.

Power to
continue busi-
ness and in-
corporate
same.

TENTH. I hereby authorize my executors and trustees hereinbefore named to continue the business now owned and carried on by me in the City of New York until he shall be able to sell or dispose of the same with advantage to my estate. I authorize and empower them to sell the same at public or private sale, in their discretion, and upon such terms as in their judgment shall be most beneficial to my estate. I furthermore authorize and empower them to incorporate such business, and to transfer the same for that purpose and to take back the stock or bonds, or both, of the Company so incorporated in payment thereof, in whole or in part, and to do and to perform any other act or thing that they may deem necessary or proper to bring about a sale or other disposition of my said business, and to dispose of the stock or bonds thereof in whole or in part, or to retain the same and to use and employ the proceeds thereof in their discretion in carrying out the provisions of this, my will.

IN WITNESS WHEREOF, I have hereunto subscribed my name at the end hereof and sealed these presents, and do publish and declare the foregoing as and for my last will and testament, this (20th) day of (*January*,) in the year of our Lord one thousand nine hundred and (*seven*.)

(*JOHN TUCK.*) [SEAL.]

In the presence of

(*ELON JOHNSON,*)

(*FRANK V. VOOS,*)

(*ABEL ADAMS.*)

On this (20th) day of (*January*,) nineteen hundred and (*seven*) (*John Tuck*,) the above-named testator, in our presence subscribed and sealed the foregoing instrument, consisting of (*five*) pages, and at the time of such subscription published and

Of Marcus Daly.

declared the same to be his last will and testament, and thereupon we, at such time at the request of the above-named testator and in his presence, and in the presence of each other, signed our names thereto as attesting witnesses.

(ELON JOHNSON,)

(12 State Street,)

(New York City.)

(FRANK V. VOOS,)

(1370 Broadway,)

(New York City.)

(ABEL ADAMS,)

(1 Garden Place,)

(Brooklyn, N. Y.)

FORM No. 467.

Will of Marcus Daly.

In the name of God, Amen.

I, *Marcus Daly*, of *Anaconda, Montana*, sojourning in the city of *New York*, do hereby make this my will, revoking all former wills by me made.

I. I give, devise and bequeath to my wife one-third of all my property, real and personal, the same to be in lieu of all dower and rights of succession, and I hereby appoint her the executor of this will.

II. I direct that my said executor divide the remaining two-thirds of my estate into four equal shares, and I give, devise and bequeath said shares to her to be held by her in trust for the benefit of my children, one share for each child, to pay the income of each child's share to that child until he or she attains the age of thirty years, and then to pay over to that child the principal of such share. During the minority of any child such portion of the income of that child's share is to be used by my executor for that child's support, maintenance and education as she deems best, and the remainder of such income is to be accumulated with or without interest until majority, and my said executor shall not be held accountable for any failure to obtain interest on such accumulations.

Of Marcus Daly.

III. In case of the death of any one of said children before attaining the age of thirty years, I give that child's share to that child's heirs, according to the present laws of the *State of Montana*.

IV. I appoint my wife as guardian of my minor children, and direct that she shall not be required to give any security as such.

V. In the event of the death of my wife before all the trusts herein are executed, I appoint my said four children or the survivors of them as trustees to execute the trusts then unperformed, and also I appoint them as executors in her place in the event of her death, without security either as executors or as trustees, and I direct that my wife shall not be required to give security either as executor or trustee.

VI. I give to my said executor and trustee and to her said successors as executors and trustees full power to sell, without application to court, any and all of my said property, whether real or personal, and to invest and reinvest the proceeds thereof as in her or their judgment she or they may deem best.

VII. I hereby empower any child during the life of the trust for that child to dispose by will of the share so left in trust for him or her.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of September, 1900.

(Signed.)

MARCUS DALY. [SEAL.]

Witnesses:

(Signed.) GUY WILLIAMS,
JOHN C. LAMSON,
ARTHUR DILLON.

The foregoing instrument was subscribed in our presence by the testator, this 18th day of *September*, 1900, and at the time thereof he declared to us, being all together, that the instrument was his will, and at his request and in his presence and in the presence of each other, we subscribed our names as such witnesses.

GUY WILLIAMS,
Residing at *Butte, Montana*.
JOHN C. LAMSON,
Residing at *Anaconda, Montana*.
ARTHUR DILLON,
Residing at *New York City*.

Of Russell Sage.

FORM No. 468.

Will of Russell Sage.

"I, (*Russell Sage*,) of the (*City and State of New York*,) do hereby make, publish and declare this my last will and testament in manner and form following:

"FIRST. I direct that all my just debts and funeral expenses be paid as soon after my decease as conveniently can be done.

"SECOND. I give and bequeath to my sister, (*Fanny Chapin*,) wife of (*Samuel Chapin*,) of (*Oneida, N. Y.*,) should she survive me, the sum of ten thousand (\$10,000) dollars.

"THIRD. I give and bequeath to each and every of my nephews and nieces of my own blood me surviving the sum of twenty-five thousand (\$25,000) dollars, and in the event that any of such nephews or nieces shall have died before me, leaving lawful issue him or her surviving, then I give and bequeath a like sum of twenty-five thousand (\$25,000) dollars to the surviving lawful issue of each nephew or niece so dying before me, the same to be distributed among such issue share and share alike *per stirpes* and not *per capita*.

"FOURTH. All the rest, residue and remainder of my estate, real, personal and mixed, wheresoever situate, of which I may die seized or possessed, or to which I may be entitled at the time of my decease, I give, devise and bequeath to my wife, (*Margaret Olivia Sage*,) to have and to hold the same to her absolutely and forever.

"FIFTH. This provision for my wife is to be in lieu of all right of dower in my estate.

"SIXTH. I authorize and empower my executors, hereinafter named, and the survivors or survivor of them to sell and dispose of all or any of the real estate of which I shall die seized or possessed at public or private sale, at such times and on such terms and conditions as they, the survivors or survivor of them, shall deem best or proper, and to execute, acknowledge and deliver all proper writings, deeds of conveyance and transfers therefor.

"SEVENTH. Should any of the gifts and bequests made by me in the second and third paragraphs of this, my will, lapse or fail for any reason I direct that the bequests so lapsing or failing shall go to and form part of my residuary estate and be disposed

Of Russell Sage.

of under and in accordance with the provisions of the fourth paragraph of this, my will.

"EIGHTH. I nominate, constitute and appoint my wife, (*Margaret Olivia Sage, Dr. John P. Munn, of the City of New York; Almon Goodwin, of said city, and Charles W. Osborne, long my confidential and trusted assistant,*) the survivors and survivor of them, executrix and executors of this, my last will and testament.

"In the event of the death, refusal or inability to act of said (*Charles W. Osborne,*) I hereby nominate and appoint (*Edward C. Osborn,*) also for some years past in my employment, as executor in his place and stead. I further direct that none of the persons above named as executors shall be required to give any bond or security for the proper discharge of their duties.

"NINTH. I hereby authorize and direct my said executors to rent a suitable office for the transaction of the business of my estate and to employ and pay out of the funds of my estate all the clerks and bookkeepers that may be necessary for the proper care and management thereof.

"TENTH. I hereby revoke all former or other wills and testamentary dispositions by me at any time heretofore made.

"ELEVENTH. Should any of the beneficiaries under this my will other than my said wife object to the probate thereof or in any wise directly or indirectly contest or aid in contesting the same or any of the provisions thereof or the distribution of my estate thereunder, then and in that event I annul any bequest herein made to such beneficiary, and it is my will that such beneficiary shall be absolutely barred and cut off from any share in my estate.

"IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal at (*No. 2 Wall Street, New York City, Borough of Manhattan,*) this (11th) day of (*February, 1901,*) in the presence of (*Edward Townsend and Richard W. Freedman,*) whom I have requested to become attesting witnesses hereto.

(*RUSSELL SAGE.*) [L. s.]

"The foregoing instrument was subscribed, sealed, published and declared by (*Russell Sage,*) as and for his last will and testament in our presence and in the presence of each of us, and we

Immediate Legacy.

at the same time at his request in his presence and in the presence of each other hereunto subscribe our names and residences as attesting witnesses this (11th) day of (*February, 1901.*)

(*EDWARD TOWNSEND,*)

("No. 130 West One Hundred and Twenty-first Street,"
("New York."))

(*R. W. FREEDMAN,*)

("No. 32 West One Hundred and Twenty-third Street,"
("New York."))

FORM No. 469.

**Devise of Dwelling, and Bequest of Immediate Legacy to Wife;
Residuary Estate in Trust for Benefit of Wife, etc.**

I give and devise to my wife, (*Viola Jones,*) my dwelling house, with the buildings and grounds connected therewith, situate on (*North Broadway*) in the (*Village of Tarrytown, Westchester County, New York,*) in fee, for her use and benefit, absolutely.

I bequeath to my said wife all my household goods, furnishings and effects, including libraries, plate and paintings, and all my horses, carriages, motor vehicles and other property which at my death may be in or about my said dwelling house, in (*Tarrytown, New York,*) or the buildings or grounds connected therewith. And I also bequeath to my said wife the sum of (*ten thousand dollars*) (\$10,000), to be paid to her within three calendar months after my decease.

I devise and bequeath all my real and personal estate whatsoever, excepting only my dwelling house, and the buildings and grounds connected therewith, and also the household goods and effects and other property in and about said dwelling house, buildings and grounds, which I have hereinbefore given to my said wife, to (*William Randolph*) and (*John Mason*) and their successors, and the survivors of them, to have and to hold the said property and estate upon and for the following trusts and purposes: That they, the said (*William Randolph*) and (*John Mason,*) or the survivor of them, or their or his successor or successors for the time being, hereinafter referred to as said trustees, shall, in such manner and upon such terms and conditions as in their or his discretion shall seem most advantageous and for the best interests of my estate, sell,

Residuary Estate In Trust.

either at public or private sale, the whole or any part of the real or personal property of which I may die seized or possessed, or any interest therein, and shall collect, or otherwise convert into money, such parts of the trust premises as shall not consist of money; and shall out of the proceeds of the said trust estate, pay my funeral and testamentary expenses and debts and the pecuniary legacy bequeathed by this will, and shall invest the residue of the said moneys in the names or name, or under the legal control, of the said trustees or trustee, in any bonds of the United States, or in the bonds or stocks of any commercial corporation regularly paying dividends, or in the bonds or notes of any municipal corporation regularly paying its interest, or in mortgages of improved real property situate within the United States; and I hereby authorize and empower the said trustees or trustee to vary the securities or investments at their or his discretion, or if it shall seem expedient, to retain any of my property in the same form of investment in which it may be at the time of my death, any law to the contrary notwithstanding.

I direct my trustees to pay the income of the said trust estate, and the moneys and investments for the time being representing the same, to my said wife, during her life, in quarterly payments; and I request my said wife, not, however, desiring hereby to impose any legal obligation upon her, to maintain and educate such of my children as shall for the time being be minors and unmarried, and to make proper annual or other allowances to such of my children as shall for the time being have attained the age of twenty-one years, and shall in her opinion require the same.

After the death of my said wife, I hereby declare that the said trustees or trustee may postpone the sale, conversion and collection of all or any part or parts of my said real and personal estate, respectively, so long as they or he shall deem proper, but my real estate shall be considered personalty from the time of my death; and during such postponement, the said trustees or trustee may manage and let upon lease, or mortgage, my real estate or any interest therein, as they in their discretion shall deem to be for the best interest of the trust estate hereinbefore created, and make out of the income or capital of my real and personal estate any outlay which such trustees or trustee may consider proper, for improvements, repairs, insurance, premium on policies, or otherwise for the benefit of the said trust estate.

Power Of Appointment.

I hereby declare that my said wife shall have the power of appointing a new trustee or new trustees of this my will, should any vacancy occur during her lifetime.

I hereby constitute and appoint the above-named (*William Randolph*) and (*John Mason*) to be executors of this my will and trustees for the purposes therein named.

FORM No. 470.**Bequest of Income of Trust Estate for Life — With Power of Appointment.**

All the residue of my estate and property, of whatsoever nature, and of or to which I may die seized, possessed or entitled, I give, bequeath and devise to the executors of this my will, upon trust, to receive the income thereof and to apply the net income realized therefrom to the use of my wife, (*Mary E. Lamb*), during her natural life, and upon her decease to pay over and transfer a part or parts of the principal, not exceeding ten thousand dollars (\$10,000.00), to such of the then lineal descendants of my wife or of my father as by her last will and testament my wife may direct and appoint; and subject to the life use therein of my wife and the exercise by her of the said power of appointment, I give, devise and bequeath the beneficial right and title in and to my said residuary estate to (*my two brothers, Samuel and Richard*), who or their heirs or assigns are to be entitled to the possession thereof upon and after the decease of my wife.

FORM No. 471.**Devise in Trust for the Benefit of Several Children — For Life, with Power of Appointment.**

"I direct that my executors hereinafter named, or such of them as shall qualify and act, divide all the rest, residue and remainder of the property and estate, both real and personal, of every kind and description and wheresoever situated which shall belong to me or be subject to my disposal at the time of my death, into such number of equal shares as shall be equal to the number of children who shall survive me, and of my children who shall have died before me leaving issue who shall survive me, and set

Devise In Trust For Benefit Of Children.

apart one of such equal shares for each of my children who shall survive me, and one of such equal shares for the issue of each child of mine who shall have died before me, leaving issue me surviving; and convey, transfer, deliver and pay over one of such equal shares to the issue of each one of my children who shall have died before me leaving issue me surviving, in equal shares, *per stirpes* and not *per capita*, to whom I give, devise and bequeath the same accordingly; and that my said executors set apart one of such equal shares for the benefit of each of my children who shall survive me, and I give, devise and bequeath the same to my executors and to such of them as shall qualify and act, as trustees, to have and to hold each share so set apart for the benefit of a child of mine (or the portion thereof not paid over and transferred to such child as hereinafter directed), upon a separate trust, for the benefit of such person for whom or for whose benefit the same shall have been set apart as aforesaid during his or her natural life, which trust, as to each share of such property or estate by this article of my will hereinbefore directed to be held in trust for the benefit of a child of mine, shall be to collect and receive the rents, issues, income and profits of so much thereof as shall be real property and to invest and keep invested so much thereof as shall be personal property with power to call in and change the investments thereof from time to time and to collect and receive the income thereof and after paying thereout all lawful expenses and charges, to apply the net income from the said trust estate arising, from time to time as received, to the use of the person in trust for whom such trust estate shall be held as aforesaid, for so long during the life of such person as he or she shall remain under the age of twenty-five years, the income of any such share held in trust for any daughter of mine to be free from the debts, control or interference of any husband she may have; and upon the arrival at the age of twenty-five years, of the person in trust for whom such trust estate shall be so held, to convey, transfer, deliver and pay over one equal fourth part of the capital of such trust estate with all gains and increase of capital thereof, if any, in fee simple and absolutely to such person; and after such person in trust for whom such trust estate shall be held in trust as aforesaid shall have attained the age of twenty-five years, thenceforward for so long during the natural life of such person as he or she shall remain under the age of thirty years to continue to hold the residue of such trust estate, in trust, to collect and receive the rents, issues,

Devise In Trust For Benefit Of Children.

income and profits of so much thereof as shall be real property and to invest and keep invested so much thereof as shall be personal property, with power to call in and change the investments thereof from time to time and to collect and receive the income thereof and after paying thereout all lawful expenses and charges, to apply the net income from the said trust estate arising from time to time as received to the use of the person in trust for whom such trust estate shall be held as aforesaid, the income of such trust estate held in trust for any daughter of mine to be free from the debts, control or interference of any husband she may have; and upon the arrival at the age of thirty years of such person in trust for whom such trust estate shall be held to convey, transfer, deliver and pay over one equal third part of the capital of such trust estate then remaining including all gains and increase of capital thereof, if any, in fee simple and absolutely to such person in trust for whom such trust estate shall be held; and from and after such person shall have attained the age of thirty years thenceforward, during the residue of the natural life of such person in trust for whom such trust estate shall have been held to continue to hold the residue of such trust estate in trust to collect and receive the rents, issues, income and profits of so much thereof as shall be real property and to invest and keep invested so much thereof as shall be personal property with power to call in and change the investments thereof from time to time and to collect and receive the income thereof, and, after paying thereout all lawful expenses and charges, to apply the net income from the said trust estate arising from time to time, as received, to the use of the person in trust for whom such trust estate shall be held as aforesaid, the income of any such trust estate held in trust for any daughter of mine to be free from the debts, control or interference of any husband she may have, and upon the death of such person in trust for whom such trust estate shall be held, to convey, transfer, deliver and pay over the capital of such trust estate as it shall then exist, with all gains and increase of capital thereof, if any, in fee simple and absolutely to such person or persons and in such shares and proportions as the person in trust for whom such trust estate shall have been held, shall by will direct and appoint; and in default of such direction or appointment, or in so far as such direction or appointment may not extend or be effectual, to the issue then surviving of such person in trust for whom such trust estate shall have been held, in equal shares *per stirpes* and not *per*

Charging Annuity Upon Estate.

capita, or if such person in trust for whom such trust estate shall have been held as aforesaid shall leave no issue him or her surviving, to the next of kin of such person in trust for whom such trust estate shall have been held, in the shares and proportions to which under the laws of the State of New York as they shall then exist, they would be entitled to the same, if the same were personal property and such person in trust for whom such trust estate shall have been held had died possessed thereof intestate."

FORM No. 472.

Bequest in Trust for Son, Giving Him Power of Appointment.

And I direct my executors hereinafter named, and their successors, to convey, assign, transfer and set over the remaining one of said shares to themselves upon the special trust and confidence, to have and to hold the same for and during the term of the natural life of my son, *Donald Fish*, and to receive the income, rents, issues and profits thereof, and to apply the same to his use, maintenance and support so long as he shall live, and from and after his death I give, devise and bequeath the said share of my residuary estate to his issue in such shares and with such estates as he may by last will and testament, or instrument in the nature thereof, limit and appoint, and in default of such appointment I give, devise and bequeath the same to his children in equal shares, the issue of a deceased child taking the parents's share by representation.

In the event that my said son shall leave no issue him surviving, I give, devise and bequeath the said share of my residuary estate to his brother, *Henry Sampson Fish*, or his issue if the said *Henry Sampson Fish* shall have predeceased his brother.

FORM No. 473.

Charging Annuity Upon Estate.

I charge upon my estate as an annuity in favor of my wife, and direct the payment by my executors of such yearly sum as shall be sufficient to pay all taxes, assessments, insurance and charges of every kind and nature which may be imposed on any of the lands

 Devise To Wife — Reverting On Remarriage.

and premises herein given to my said wife and which shall be sufficient to pay the rent of my pew No. 16, in Trinity Church, in the City of New York, hereinafter given to my wife, during the time that the above shall be held and enjoyed by her.

FORM No. 474.
Bequest to Wife for Life, to Revert in Case of Her Remarriage.

I give, devise and bequeath to my dear wife, *Adelaide F. Hodgson*, for and during the term of her natural life, if she shall remain my widow, and if not I give, devise and bequeath to her until she shall remarry, my dwelling house and stable, with the ground attached to the same, being my present residence, situate at *the northwesterly corner of Madison Avenue and Sixty-eighth street, in the Borough of Manhattan, City of New York*, and also my country place, known as "*The Oaks*," situate at *Pawling, Massachusetts*, together with all the lands, stables and buildings belonging thereto; also all my horses, carriages and motor vehicles, and all the furniture and articles of use and ornament of every kind and nature in either of my said residences at the time of my decease.

All of the aforesaid lands and personal property shall revert to and form a part of my residuary estate on the death of my wife or her remarriage, if she shall again marry.

FORM No. 475.
Legacy — Cutting Off Wife.

I give and bequeath unto my wife, , the sum of five dollars, which is intended by me to be in full and in lieu and bar of her dower and all and every other right or interest in and to my estate. I make only this provision for her for the reason well known to her and to all my friends and for the further reason that during our married life she was wilfully and wastefully extravagant and brought upon me much unnecessary suffering.

 Revoking Legacy If Contested.

FORM No. 476.**Legacy — Cutting Off Son.**

I give and bequeath unto my son, ,
the sum of five dollars, and it is my will that this provision be in
lieu and bar of every right and interest in and to my estate.

I make only this provision for him for reasons well known to
him and to all my family and friends, and for the further reason
that during his whole lifetime since he attained , he
has been disobedient and ungrateful.

FORM No. 477.
Clause Revoking Legacy in Case of Contest.*

If any person named in this my last will and testament shall
directly or indirectly institute or become an acting party to any pro-
ceedings to set aside, interfere with, or make null any provision of
this will or to offer any objections to the probate thereof, or shall
in any manner directly or indirectly contest the probate thereof,
then and in that event I revoke the provision of this my will in
his or her or their favor, and such act or proceedings shall operate
and be effective as a release on the part of such heir, next of kin,
legatee or devisee to any part of my property or estate, and any
provision of my will in favor of such party I do hereby abrogate,
annul and make void, and I direct and will that the person so
acting, proceeding and contesting shall receive no part or portion
whatsoever of my estate either under this will or otherwise, and
the said property that would have gone to him, her or them shall
go and become a part of my residuary estate.

FORM No. 478.
Revoking Bequests in Case of Participation in Contest.

I will and direct that in case any person shall institute, conduct
or share in any proceedings to oppose the probate of this my last
will and testament or to impeach or impair or set aside or in-
validate any of its provisions, any devise or legacy to or for the

* See also will of Russell Sage, Form 468 *supra*.

Directions To Trustees.

benefit of such person or persons under this my last will and testament shall thereupon be revoked and shall become and remain null and void, and such person or persons shall be excluded from any participation in and shall not receive any share or portion of my property or estate, real or personal, and the portion to which such person might be entitled if I had died intestate as to the whole or any portion of my property or estate or any share or portion to which such persons might be otherwise entitled, I give, devise and bequeath to such of the following beneficiaries, to wit: my wife, *Sarah Clarke Hobson*, my four children, *Catherine Louise, Adelaide Frances, Arthur and Charles Garretson*, and my two grandchildren, *Oliver S. Wilson and Margaret Hobson Wilson*, children of my deceased daughter, *Alice Hobson Wilson*, as shall not participate in such action, in equal shares as to my said wife and children, and as to my said grandchildren in such proportion as their mother would be entitled to if living.

FORM No. 479.**Directing Trustees to Disregard any Assignment or Anticipation of Beneficiary's Interest.**

"No person for whose benefit any trust is hereby created shall have power to anticipate or to dispose of any income directed to be paid or applied to the use of such person until the same shall have fully accrued and become payable to such heir, and the trustees of said respective trusts are empowered and requested to disregard and defeat every assignment or other act in contravention of this clause in my will."

FORM No. 480.**Declaring Trust to be Made With Reference to the Laws of the State of New York.**

"I declare that this, my will, and every part thereof, is made with reference to the present existing laws and statutes of the State of New York, relating to trust and trust estates by will or legal distribution, and without regard to the laws and regulations of any State or country where I may happen to be at the time of my decease, or where any portion of my estate may be situated."

Attestation Clause — Codicil.

FORM No. 481.**Attestation Clause from Collis P. Huntington's Will.**

On this *thirteenth* day of *March*, one thousand eight hundred and *ninety-seven*, the above-named testator, *Collis P. Huntington*, in our presence subscribed and sealed the foregoing instrument, and declared the same to be his last will and testament, and thereupon we, at his request, and in his presence, and in the presence of each other have hereunto subscribed our names as attesting witnesses.

MAXWELL EVARTS,

231 Second avenue, New York city.

ANDREW K. VANDEVENTER,

531 North Broad street, Newark, N. J.

GEORGE E. DOWNS,

628 Carlton avenue, Brooklyn, N. Y.

Note. — It is always well to have three witnesses to prove a will, as it may be necessary to prove the will under the laws of another State where three witnesses are required, as for example:

If it involve real estate in a State requiring three witnesses, and the will only had two, testator would die intestate. as to the foreign real estate.

FORM No. 482.**Codicil.**

I, *George Rose*, of the *City, County and State of New York*, having made my last will and testament bearing date the *21st* day of *July*, in the year one thousand nine hundred and *one*, do now make and publish this codicil thereto which is to be taken as an addition to and a part of my said last will and testament.

First. I revoke the appointment of *Roger Main* as one of my executors of my said last will and testament, and declare that it is my intention and desire that my executrix and executor shall be my wife, *Mary Rose*, and my friend, *Harry Stafford*.

Second. I also authorize my said executors to invest and keep invested my said estate as provided in the "fourth" paragraph of my said last will and testament in any securities or other forms of investment which they, in their discretion, shall deem proper

Letter To Accompany.

or advisable, irrespective of the law governing investments by executors and trustees, and I also authorize my said executors to continue any of my present investments as long as my said executors shall in their discretion determine to be advisable and to the interest of my estate.

And I hereby ratify and confirm my said last will and testament shall thereupon be revoked and shall become and remain null sistent with this codicil.

IN WITNESS WHEREOF, at the end of this codicil to my last will and testament I have subscribed my name and affixed my seal this *twenty-first* day of *May*, in the year one thousand nine hundred and *one*.

GEORGE ROSE. (SEAL.)

Subscribed by the above-mentioned testator in the presence of each of us, and at the same time declared by him to be a codicil to his last will and testament, and thereupon we at his request and in his presence and in the presence of each other signed our names as subscribing witnesses.

Witnesses:

JOHN J. JAMES, *Hotel Netherlands, N. Y. City.*

DAVID WILLCOX, *12 Portland avenue, Brooklyn.*

FORM No. 483.

Letter to Accompany Will.

Letter of Instruction in Case of My Death.

First. I own burial lot, and desire to be buried

Second. I desire to examine my papers and destroy such as are of no value.

Third. I have safe deposit vault.

Fourth. I have valuable papers in the following places:

Fifth. I have deposits in the following banks and trust companies:

Sixth. I am insured in the following companies:

Letter To Accompany.

Seventh. I have mortgages on my property.
Eighth. My estate consists principally of:

Ninth. In case of my death I desire the following persons to be notified at once: My family.....
My executors
My counsel, Kent & Blackstone, No. 1 Wall street, New York city, and
Tenth. My last will and testament is in the safe-keeping of my counsel, Kent & Blackstone, 1 Wall street, New York city.

Notice. — Deliver this letter of instructions to some one who would in all probability be notified at once of your death, and who you are in the habit of seeing daily.

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